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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 44

FRED Y. OYAMA AND KAJIRO OYAMA,

Petitioners,

vs.

STATE OF CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA.

BRIEF FOR RESPONDENT.

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Opinions Below.

The findings of fact and conclusions of law in the Superior Court [R. 58-64] are not reported. The opinion in the Supreme Court of California [R. 102-120] is reported in 29 Advance California Reports 157; 173 P. (2d) 794.

Jurisdiction.

The judgment of the Supreme Court of California was entered October 31, 1946 [R. 121]. An order denying these petitioners' petition for rehearing was entered November 25, 1946 [R. 120]. Petition for a writ of cer-

tiorari was filed on February 25, 1947, and was granted on April 7, 1947 (330 U. S. 818). The jurisdiction of this Court rests upon Section 237(b) of the Judicial Code, as amended.

Questions Presented

(as stated by Petitioners).

1. Whether the Alien Land Law, as applied in this case, deprives petitioner Fred Oyama, an American citizen, of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of the Fourteenth Amendment to the Constitution.

2. Whether the Alien Land Law, as enforced and as applied in this case, deprives petitioner Kajiro Oyama, an alien of the Japanese race, of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution.

3. Whether the decision of the Supreme Court of California, holding that no statute of limitations is applicable to actions for escheat under the Alien Land Law, is not a retroactive reopening of a vested title to real estate which also violates the Fourteenth Amendment.

Statutes Involved.

The relevant provisions of the California Alien Land Law (Alien Property Initiative Act of 1920, Cal. Stats. (1921) p. lxxxiii), as amended, are set out in Appendix A, *infra*.

Statement.

The petition for escheat [R. 1] which was filed in the Superior Court of the State of California in and for the County of San Diego on August 28, 1944, alleged in substance: That Kajiro Oyama and his wife, Kohide Oyama, are natives and citizens of Japan, and, consequently, ineligible to citizenship in the United States; that they purchased certain agricultural land in San Diego County for their own use and benefit in violation of the Alien Land Law, taking title to the land in the name of their minor son, Fred Yoshihiro Oyama, a citizen of the United States.

Although it is stated at page 16 of Petitioners' Brief that the defendants in that action "have been for most of the time in a detention camp and easily available to the State," respondent's information is that the Oyama family were never held in a detention camp or a relocation center, but that they voluntarily left California sometime prior to the general evacuation and resided at the time the proceeding was filed at 383 North 4 West, Payson, Utah. The Superior Court accordingly made its order for publication [R. 10] directing the defendants Oyama to be notified by mail at that address, and the defendant June Kushino to be served at Chicago, Illinois. The defendants appeared voluntarily in the action on November 6, 1944 [R. 17], and on February 17, 1945, filed their demurrer and points and authorities in support thereof [R. 18]. The demurrer was fully argued and was overruled by written opinion of the Superior Court [R. 38],

and thereafter the answer was filed on April 28, 1945 [R. 53].

Defendants' answer admitted the race and citizenship of the parents, Kajiro Oyama and Kohide Oyama, but alleged as an affirmative defense [R. 54-55] that the transaction constituted a *bona fide* gift from the parents to the child. The language of the answer is as follows:

"Defendants aver that Kajiro Oyama, the father, furnished the funds and/or credits to purchase the said property as a gift for his child, Fred Y. Oyama, and that said entire transaction was a *bona fide* gift and not a subterfuge and fraud upon the People of the State of California, as alleged in the complaint."

It was further conceded by defense counsel in his opening statement at the trial [R. 80] that the burden of proof rested on the defendants to sustain defendants' affirmative defense and to overcome the presumption set forth in Sec. 9 of the Alien Land Law (Stats. 1921, p. lxxxiii, as amended by Stats. 1923, p. 1024, Deering's Gen. Laws, Act 261). Mr. Wirin's statement reads:

"By way of finality, we think the central situation is the good or bad faith of the transaction. We concede that under the statute there is a presumption and we admit that the burden is upon us to overcome the presumption and we hope to be able to overcome that presumption."

The presumption in question imposed by Section 9 of the Act reads as follows:

"A *prima facie* presumption that the conveyance is made with such intent (*i.e.*, 'with intent to prevent, evade or avoid escheat') shall arise upon proof of any of the following groups of facts:

“(2) That taking of the property in the name of a person other than the persons mentioned in section two hereof (here, in the name of a citizen) if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof (i. e., an ineligible alien).”

Notwithstanding the admission of the answer that the consideration was furnished by the ineligible alien father, and the concession in the opening statement that the burden of proof rested upon the defendants to overcome the presumption that the payment of the consideration tends to establish the beneficial ownership in the ineligible alien rather than in the person in whose name title is taken, the defense refused to produce the defendant Kajiro Oyama (the ineligible alien father) as a witness, either as a hostile witness under Section 2055 of the Code of Civil Procedure as part of the plaintiff's case [R. 97-99], or as part of the defendants' case [R. 100]. The defendant Kajiro Oyama was available, as admitted by his counsel [R. 98], and the trial court [R. 103] drew an inference that his testimony would be unfavorable to his case; that is, that the failure of the defense to call one of the principal defendants to the witness stand and, particularly, by stratagem, to keep him out of the courtroom so as to make his testimony unavailable to the plaintiff unless subpoenaed amounted to a willful suppression of evidence.

It was further alleged in the complaint [R. 4], and admitted in the answer by failure to deny [R. 53-55], as well as established by testimony, as to the County Clerk's office [R. 83] that no accounts or reports were ever filed with the Secretary of State, or with the County

Clerk as required by Section 5 of the Alien Land Law in cases where a valid relation of guardian and ward exists. The trial court specifically found against the affirmative defense [R. 61].

The issues were determined by the Superior Court as follows: The defendants' demurrer was argued before Honorable Charles C. Haines, and on March 2, 1945, a written opinion overruling the demurrer was filed. This opinion is found in the Transcript of Record [p. 38]. Thereafter the defendants' answer was filed and a trial had before Honorable Joe L. Shell, who found for plaintiff and delivered a brief oral decision [R. 101-103].

The testimony of the witness John C. Kurfurst is summarized by the Supreme Court of California as follows:

"Upon the trial of these issues, John C. Kurfurst was the only witness. He testified that he had known the Oyama and Kushino families since about 1932. When the Japanese were evacuated from the Pacific coast, he rented the land in controversy and, by two checks, paid the rent to Fred Oyama. These checks were returned to him endorsed in that name. Kurfurst had never heard the name Kajiro Oyama; he had always known the father of the family as 'Fred' and stated that 'everybody else called him Fred.' But he had received a letter signed 'Fred Oyama' notifying him that the property was being turned over to a Mr. Kelly although Kurfurst had never heard the writer refer to himself by that name.

"Other testimony of Kurfurst was that at one time Oyama [fol. 192], senior, said: 'Some day the boy

will have a good piece of property because that is going to be valuable.' However, he admitted that in a letter which he wrote, in referring to 'Fred Yoshihiro Oyama,' he meant the son and not the father. He knew that the property belonged to the boy, Fred Oyama, and to June Kushino; also that the father was running the boy's business. But he did not know whether the checks were made out to the 'old man or the young fellow' and he did not know 'whether the boy signed it or Mr. Oyama.' "

Statement Concerning Specification of Errors.

By demurrer in the trial court [R. 18] the defendants raised a federal question as follows:

"The California Alien Land Law is unconstitutional in that, under the Constitution of the United States, it deprives the defendants of liberty and property, and of the equal protection of the laws, under the XIVth Amendment to the Constitution of the United States; and abridges the rights of the defendants under the Constitution of the State of California to due process of law under Article I, Section 13 of the Constitution of the State of California, and of privileges guaranteed by Article I, Section 21 of said Constitution."

The California Supreme Court [R. 108-109] states that as to both Kajiro Oyama and Fred Oyama the issues of due process and equal protection have been raised, and as to defendant Fred Oyama the further issue of his privileges and immunities as a citizen were raised and consid-

ered. It is submitted by respondent that none of the following items urged by the brief were at any time raised below either in the Supreme Court or in the Superior Court, and that, consequently, these issues should be removed from the present case and not be considered further, upon the authority of such cases as *Barrington v. Missouri*, 205 U. S. 483; *Radio Station WOW v. Johnson*, 326 U. S. 120; *Montana v. Rice*, 204 U. S. 291.

The questions which respondent alleges were never raised before are as follows:

1. Specification No. 3: That California removed a statute of limitations which had already run (Br. for Pet. pp. 3, 53, *et q.*).

2. The effect of the United Nations' Charter (Br. for Pet. p. 52).

(Note that the theory of the California Alien Land Law and the finding and judgment of the California courts is that the State of California became the owner of Parcel No. 1 on August 18, 1934 [R. 60], and became the owner of Parcel No. 2 on December 17, 1937 [R. 62]. The California Supreme Court specifically holds [R. 117] that the land escheated to the State *instantly*, a conclusion which is also supported by *People v. Nakamura*, 125 Cal. App. 268).

3. The *amicus curiae* has contended further that the California Alien Land Law is violative of the civil rights provision found at U. S. Code, Title 8, section 41. Not only has this point not been raised in the courts below, it apparently is not even raised by the parties to the proceeding.

SUMMARY OF ARGUMENT.

Introductory.

What appellants ask this Honorable Court to do at this time is to disaffirm and overrule decisions which have for over two decades stood as a well-defined and positive pronouncement of the constitutionality of the California Alien Land Law. If this end is not attainable by them they ask, and this is the real substance of their request, that this Court announce that the considerations upon which its decisions have been based were but passing shibboleths, no longer to be accorded the dignity of judicial recognition.

This Court is here asked to strike down a decision of the Supreme Court of the State of California which is bottomed upon direct and unequivocal assurances of the highest tribunal in the land that both due process and equal protection of the laws are vouchsafed by this law.

The state has been assured (1) that the Fourteenth Amendment does not take from it those police powers that were reserved at the time of the adoption of the Constitution; (2) that in the exercise of such powers it has wide discretion in determining its own public policy and what measures are necessary for its own protection, and properly to promote the safety, peace, and good order of its people; (3) that in adjusting legislation to the need of the people of a state, the legislature has a wide discretion and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable;

(4) that it has the power to deny to the aliens the right to own land within its borders and that such legislation applying alike to all within the class cannot be said to be capricious or arbitrary; (5) that two classes of aliens inevitably result from the Naturalization Laws,—those who may and those who may not become citizens; and (6) that the rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership. *Terrace v. Thompson*, 263 U.S. 216.

These are the basic principles which this Court is asked to disavow in the request made that its former decisions be overruled.

I.

As to the claim of Fred Oyama that he has been denied equal protection and the privileges and immunities of a citizen, the State of California does not question that he is a citizen and entitled to full protection of all the rights of citizenship without reservation. The Superior Court found as a fact and the Supreme Court of California affirmed as supported by sufficient evidence, that Fred Oyama was never the owner of property and that the deed purporting to convey title to him was given him by his ineligible alien father as a subterfuge and fraud upon the state and without intending or effecting a *bona fide* gift. In part this evidence consisted of a presumption that beneficial ownership in the ineligible alien will arise when it is proved, or as in the present case, admitted by an-

swer, that the purchase price was paid by the ineligible alien. The presumption applies equally to all persons in whose name title to land is placed, where the purchase price was so paid.

The presumption of the California statute is not conclusive and has not been construed by the California courts to be other than rebuttable. (*People v. Fujita*, 215 Cal. 166, 171.) Being rebuttable it has a reasonable basis, and will be sustained as a proper exercise of the police power. (*Heiner v. Donnan*, 285 U. S. 312.)

The appeal as to the minor citizen Fred Oyama is primarily a question of fact. California has no intention or desire to deprive her citizen of property. California's courts have determined as a fact that Fred Oyama is not and has never been the owner of the property in question.

II.

As to the constitutionality of the California Alien Land Law, California does not attempt to sustain the reasonableness or scientific or moral justification of race discrimination. California urges instead the following points:

1. The constitutionality of the Alien Land Law has been previously sustained by this court.

2. The classification of aliens ineligible to citizenship cannot be said to be exclusively racial; it has existed in the Federal law throughout the history of the nation; it is not intrinsically unreasonable; the State may assume that what has existed without in-

terruption in Congressional legislation has a rational basis and may be adopted as a primary standard for secondary State legislation upon this subject.

3. It may be reasonably said that there is a positive correlation between eligibility to citizenship on the one hand and loyalty and active interest and ability to work for the safety and welfare of the State on the other. This correlated relationship is a proper basis for the exercise of police power with regard to land ownership.

4. Subsequent to the decisions of this court in 1923 sustaining the Washington and California laws, eight other states have adopted similar legislation, indicating that the reasonableness of the Alien Land Laws has met with considerable general acceptance.

5. Petitioners have neither averred nor proved that the Alien Land Law is not enforced against all offenders. That most of the litigation stemming from the Statute involves Japanese results from the fact that most violators are Japanese. Congress has admitted almost no Chinese since 1882. Hindus have in fact violated the Law and have been prosecuted when violations were discovered.

III.

That at the time of its adoption there was a rational basis for the Alien Land Law in so far as the Japanese people is concerned is demonstrated by this Court's decision in *Hirabayashi v. United States*, 320 U. S. 81. The rule laid down by Congress in its Naturalization Laws is a valid standard for the classification and continues to

provide such a standard. Even were it to be assumed that changed conditions and circumstances as of 1947 might in some way bring about a changed status of the law, this could not affect the escheat of the lands here involved, which took place in 1934 and 1937, respectively. Subsequent events such as the United Nations Charter and the admission of Chinese, Filipinos, or natives of India to eligibility to citizenship cannot divest the State of California of property to which it succeeded by operation of law.

The Alien Land Law does not impinge on any statutory field pre-empted by the Federal government. The Statute concerns itself with the regulation of ownership of land within its boundaries, which is recognized as within her exclusive province in the absence of treaties. Other effects are purely incidental and cannot be said to transgress constitutional limits. *Clark v. Allen*, 67 Sup. Ct. Rep. 1431, 1439.

IV.

It is urged that California has denied due process by holding inapplicable its own statute of limitations, Section 315 of the Code of Civil Procedure, adopted in 1872. The California Supreme Court held below that the Alien Land Law, adopted in 1920 was entirely inconsistent with a Statute of Limitations, in that an ineligible alien who could not own, possess, enjoy, use, cultivate, or occupy land could not by ten years' occupancy acquire any prescriptive right to continue that which the statute made him continuously incapable of doing. This construction of the State Law, it is submitted, went entirely to a matter of local procedure and does not present any federal question nor infringe any constitutional right.

ARGUMENT.

Introductory.

A. What Does the Alien Land Law Do?

The so-called Alien Land Law of California¹ legislates as to the right of land ownership in that state. The right governed by the statute is not limited to mere acquisition and ownership. By its definition this right includes that to "acquire, possess, enjoy, use, cultivate, occupy and transfer real property," also to "have, in whole or in part the beneficial use thereof." (Alien Land Law, secs. 1, 2.)²

This right is given to citizens of the United States and to all aliens eligible to become such; aliens who are not eligible to citizenship under the laws of the United States can enjoy the right only in the manner and to the extent and for the purposes prescribed by any treaty, existing at the time of the enactment of the statute (*i. e.*, on December 9, 1920), between the government of the United States and the nation or country of which the alien is a citizen or subject, "and not otherwise." (Alien Land Law, secs. 1, 2.)

Where the property interest involved in an attempted acquisition is of such character that the ineligible alien "is inhibited from acquiring, possessing, enjoying, using,

¹Act 261, Deering's General Laws, 1937, designated as "Alien Property Initiative Act of 1920." Submitted by initiative and approved by electors November 2, 1920, Stats. 1921, p. lxxxiii, in effect December 9, 1920. Amended by Stats. 1923, Chap. 441; Stats. 1927, Chap. 528; Stats. 1943, Chap. 1059; Stats. 1945, Chaps. 1129, 1136."

²For purposes of brevity and convenience the term "Alien Land Law" will be used when referring to the statute designated in note ¹.

cultivating, occupying, transferring, transmitting or inheriting it" and if the conveyance is made "with intent to prevent, evade or avoid escheat," the transfer of the real property, or any interest therein, though colorable in form, *shall be void as to the State* and the interest thereby conveyed or sought to be conveyed *shall escheat to the State as of the date of such transfer.* (Allen Land Law, sec. 9, as amended in 1923. Stats. 1923, p. 1024.)

Section 7 of the statute, as amended in 1923 (Stats. 1923, p. 1023), and as it has since continued in effect to the present time, also provides that the real property acquired in violation of the act by an ineligible alien "shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California."

B. Is the Classification Valid?

As for the basis of the classification, *i. e.*, that of eligibility to citizenship, this Court has held:

"Two classes of aliens inevitably result from the naturalization laws—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act. We agree with the court below [274 Fed. 841, 849] that: 'It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state—and, so lacking the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot

of land within the state might pass to the ownership or possession of noncitizens' . . . The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself."

(*Terrace v. Thompson*, 263 U. S. 197, 220-221; 44 Sup. Ct. 15, 20.)

The California Supreme Court, in *Mott v. Cline*, 200 Cal. 434, quoted the above language of the United States Supreme Court in *Terrace v. Thompson*, *supra*, and in very positive terms upheld the Alien Land Law as a lawful exercise of the police power. We quote its language:

"It has been firmly settled by the decisions of both federal and state courts (citing decisions) that the adoption of the Alien Land Acts was a lawful exercise of the police power. In fact, it is the exercise of that power in its highest and truest sense. The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state. It directly affects its welfare and safety." (*Mott v. Cline*, *supra*, at 447.) (Italics added.)

C. The Ownership of Land.

There is something very real, something very fundamental in the relationship between loyalty to country and ownership of its soil. Devotion and patriotism to country seem to be affected in some indefinable way by bonds of birth in or sworn allegiance to that country in which possession of its land is enjoyed and protected. It is not necessary to explore the realms of political philosophy to discover a cause—it is one of the human instincts. While

bonds of loyalty may not be affected by the ownership of personal property—for one might own a chattel which he could carry with him as he roamed every country of the world without obligation or loyalty to the place in which he momentarily found himself—ownership of land appears infinitely more precious and indescribably different, something inherently related to loyalty and allegiance. Recognizing this, the California Supreme Court held that "The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state." (*Mott v. Cline, supra*, at 447.)

It is not improbable that it was with this thought in mind that the desire of the Empire of Japan was that the right to own land be not conferred in the treaty between the two nations in effect at the time the Alien Property Initiative Act of 1920 was adopted—which incorporated all treaty rights, *then existing*, between this and other nations. (Alien Land Law, sec. 2.) This treaty, the Treaty of Commerce and Navigation of 1911 (37 Stat. 1504-1509), was construed by the United States Supreme Court in *Terrace v. Thompson*, 263 U. S. 197, 223; 44 Sup. Ct. 15, 21, with reference to conferred rights of land ownership as follows:

"The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, *in accordance with the desire of Japan, the right to own land was not conferred.*" (Italics added.)

References by appellants to motives activating the adoption of the alien land law in California are, therefore, without persuasive effect, as it was at the instance of Japan that the treaty provisions were not extended to the reservation of the right to own land.

As pointed out in *Terrace v. Thompson, supra* (at p. 221) the thing forbidden is not the opportunity to earn a living in common occupations of the community, but the privilege of owning and controlling land.

D. Violations of the Alien Land Law and Their Effect.

That the California Alien Land Law has been studiedly and defiantly evaded and violated through various adroit artifices of circumvention is a matter of common knowledge.

We quote two significant statements from the so-called Tolan Report:¹

"(1) The law was nullified by special unwritten arrangements, excessive wages, gifts, Japanese-controlled corporations and guardianships" (at p. 86).

"(2) That the Japanese by various devices were able to circumvent the provisions of the land law is generally acknowledged. Some avoided conflict with the ownership provisions by purchasing agricultural land in the names of their minor children born on American soil, for whom they acted as guardians, or by paying American citizens to purchase land and hold it for them or their children. Another fairly common practice was to form dummy corporations in which perhaps 51 percent of the stock was held by an American, usually the corporation's attorney, who in reality held only a 'naked trust' without any voice in the management of the corporation's affairs" (at p. 78).

¹Tolan Congressional Committee (Report of Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2nd Session, House Report No. 2124).

The following quotation from Mr. Carey McWilliams' book "Prejudice" (Little, Brown & Company, 1944), a text repeatedly referred to in petitioners' brief, is also eloquent on this subject:

"The act (California Alien Land Law) was easily evaded: title to farm land was placed in the names of Hawaiian or American-born Japanese—verbal agreements were entered into—'gentlemen's agreements'—that ran counter to the terms of written documents; Japanese were employed as 'managers' instead of as 'tenants.' By these and other devices, and with the connivance of law-enforcement officials, the act was blithely ignored" (at p. 65).

That these practices, acknowledged as having been frequently engaged in, engendered a deplorable lack of respect for law has been all too obvious.¹ Such ignoring of the provisions of the alien land law could result in a complete break-down of the dignity of the mandate of both the legislature and the electors of the state. With such an abandonment of respect for the law, how can

¹The following statement of facts from the urgency clause accompanying Chapter 1129 of the statutes enacted by the Fifty-sixth Legislature illustrates what has been said as to the lack of respect for law resulting from infractions:

"A large number of violations of the Alien Land Laws of California have taken place, over a considerable period of time, as a result of which substantial areas of land have been illegally acquired and are now being held by aliens ineligible to citizenship. This not only deprives citizens and those eligible to become such of the right to acquire and enjoy the use of these lands but it engenders a lack of respect for the laws of this State and their enforcement, both on the part of ineligible aliens and citizens. There exists a feeling of uncertainty and distrust as to the lawful ownership of land in many localities of the State, with resultant growing resentment and threatened unrest. . . ." (Stats. 1945, p. 2168.)

good citizenship be expected—particularly from those of alien birth and allegiance whose concepts of philosophy and government were foreign to ours and to whom we owe the duty and responsibility of inculcating a respect for our law? Certainly the placing of a premium upon its bold and defiant infraction cannot stimulate or engender such respect. That some law-enforcement officials were remiss in the performance of their duties, with the result that certain writers have stated that violations were condoned and even encouraged, cannot be pointed to with pride, nor can it justify the defiant violations which took place.

E. The Decisions and the Canons of Construction.

The constitutionality of the Alien Land Law has been repeatedly sustained in the past by the United States Supreme Court and by the California Supreme Court without dissent by any of the justices thereof. The reasoning heretofore used by the courts is hereby adopted as part of the argument in favor of the constitutionality of the Act without unnecessarily burdening this record with lengthy quotations. The cases upon which particular reliance is placed are: *Terrace v. Thompson*, 263 U. S. 197; and, also, the opinion of the Circuit Court below in the same case, 274 Fed. 841; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326; *Cockrill v. California*, 268 U. S. 258; *Morrison v. California*, 288 U. S. 591; *Morrison v. California*, 291 U. S. 82; *In re Akado*, 188 Cal. 739; *In re Okahara*, 191 Cal. 353; *Porterfield v. Webb*, 195 Cal. 71; *Mott v. Cline*, 200 Cal. 434; *People v. Osaki*, 209 Cal. 169.

If there be any vitality in the doctrine that legislation shall not be lightly overthrown or set aside as unconstitutional unless its invalidity is established beyond reasonable doubt, then the reasoning heretofore applied by the courts in sustaining the legislation must be recognized as having been acceptable to and supported by honest men of reasonable judgment.

The petitioners in urging the unconstitutionality of the Alien Land Law have asked this Court to depart from certain of the accepted canons of constitutional construction, and particularly from canons which it was formerly thought were especially cherished by liberal thinkers. Certain of these canons have been summarized at 11 Am. Jur. 718, with citations of authority, as follows:

"The courts invariably give the most careful consideration to questions involving the interpretation and application of the Constitution and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance; and they should never declare a statute void, unless its invalidity is, in their judgment, beyond reasonable doubt."

And, at page 719:

"In all instances where the court exercises its power to invalidate, the conflict of the statute with the Constitution must be irreconcilable, because it is only a decent respect to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity until the contrary is shown beyond reasonable doubt."

Among the numerous cases in which these principles have been enunciated are:

Home Telephone and Telegraph Co. v. Los Angeles, 211 U. S. 265, 53 L. Ed. 176;

Everard's Breweries v. Ralph Day, 265 U. S. 545, 68 L. Ed. 1174;

Mugler v. State of Kansas, 123 U. S. 623, 31 L. Ed. 205;

Legal Tender Cases, 12 Wall. 451, 20 L. Ed. 287;

Fletcher v. Peck (10 U. S.), 6 Cranch 87, 3 L. Ed. 162;

Miller v. Board of Public Works, 195 Cal. 577;

People v. Hayne, 83 Cal. 111.

At 11 Am. Jur. 789, the same principle is stated:

"The opinion has been expressed that the conviction required to overcome the presumption in favor of a statute must be clear and strong and that a law should never be lightly overthrown, or set aside as unconstitutional. The validity of a law ought not to be questioned unless it is so obviously repugnant to the Constitution that when pointed out by the judges, all men of sense and reflection in the community may perceive the repugnancy."

Or, as stated by Justice Cardozo, "The Nature of the Judicial Process" (1921), pp. 88-9:

"In judging the validity of statutes, the thing that counts is not what I believe to be right. It is what I may reasonably believe that some other man of normal intellect and conscience might reasonably look upon as right."

In urging upon this Court that there is a rational basis for the legislation, respondent summarizes its argument

in favor of the rationality of the Alien Land Law as follows:

The courts have heretofore consistently sustained the legislation and have advanced reasons in support of the legislation, which grounds cannot be said to be clearly, manifestly or palpably unreasonable or without any foundation in fact or in law.

The Legislature of California in 1913, the People by initiative in 1920, the Supreme Court of California on numerous occasions unanimously, and the United States Supreme Court unanimously have sustained the legislation. If, therefore, we are to accept the canon of construction that the proper test is not whether the Court accepts the reasoning which inspired the legislation as conclusive, but, instead, whether the reasoning is such that the Court might admit the possibility that a rational mind could entertain such reasoning, the result is obvious. The fact that Mr. Justice Holmes concurred in the decisions in *Terrace v. Thompson*, *Porterfield v. Webb*, *Webb v. O'Brien* and *Frick v. Webb*, is indication, we think, that the underlying philosophy of the Act is not repugnant to a rational, enlightened but unprejudiced mind. It may be observed in passing that in the cases referred to, in which Mr. Justice Butler wrote the opinion, Mr. Justice Sutherland took no part in the consideration or decision of the case, Mr. Justice McReynolds and Mr. Justice Brandeis were of the opinion that there was no justiciable question involved and that the cases should have been dismissed on that ground, and the other Justices, Holmes, Chief Justice Taft, Sanford, Vandeventer and McKenna concurred.

From this point we address ourselves to the contentions advanced by the petitioners, in the order in which they are presented.

I.

The Alien Land Law Does Not Deprive Fred Oyama, the Citizen Son, of the Equal Protection of the Laws or of the Privileges and Immunities of a Citizen.

It is contended by petitioners (Br. for Pet. pp. 11-23) that the citizen son, Fred Oyama, is deprived of his rights as a citizen because the Alien Land Law offends the equal protection and privileges and immunities clauses of Section 1 of the Fourteenth Amendment. The claim is that, because his father is an ineligible alien, he is discriminated against.

It should be made clear at the outset that there is no dispute whatever as to the right of an American born child of an ineligible alien parent to acquire and hold real property in California. *All persons* who are citizens, whether their forbears have been citizens of this nation since its inception or whether none of them have ever enjoyed that privilege, have the right to acquire and own land. This right is even extended specifically by the Alien Land Law to those who are *eligible* to become citizens. (Section 1.) This right of the citizen child is upheld in clear and positive language in *Estate of Yano*, 188 Cal. 645, and *People v. Fujita*, 215 Cal. 166. The issue in the instant case is not the right of the citizen son to own land; it is the *bona fides* of the transaction of the father whom the state alleged attempted to acquire the land as his own by means of the subterfuge resorted to.

That the courts of California are vigilant in upholding a valid, *bona fide* gift to citizen children by ineligible alien parents is evidenced in *People v. Fujita*, *supra*. In that case evidence of the *bona fide* intent of the father was

introduced and both the trial court and the Supreme Court held that no violation had taken place.

Here the trial court found [R. 58] and the Supreme Court affirmed the finding [R. 117] that what was involved was a fraudulent attempt to circumvent the escheat provisions of the Alien Land Law (Sec. 9). Said the Court below:

"The trial court's findings in regard to the violation of the statute are fully supported by the evidence. The inferences to be drawn from the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, the father's failure to file the reports required of a guardian, the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, and the presumption created by section 9 of the Alien Land Law, are ample in this regard. Indéed, this evidence convincingly points to the conclusion that the minor son had no interest in the property, his name being used only as a subterfuge for the purpose of evading the Alien Land Law." [R. 117.]

That the findings of a trial court on an issue of fact will not be disturbed if supported by any substantial evidence is well established.

3 Am. Jur., Sec. 883, Appeal and Error;

5 Cal. Jur., Sec. 1642, Appeal and Error; and cases cited.

What the contention of the appellants amounts to is that the State must sit idly by and remain helpless until a deed is recorded naming an ineligible alien as grantee and that meanwhile the true owner, or rather the one who sought (without effect because of his legal inca-

capacity) to acquire the property, the one whose money paid for the property, the one inhibited by the statute, may possess, enjoy, use, cultivate, and occupy and have the beneficial use of the property, as was done here after the fraudulent transactions took place. The plain intent of the statute will support no such attenuated contention.

The argument advanced by petitioners at page 12 of their brief to the effect that Fred Oyama is, under the Alien Land Law, something less than a full American citizen, and is therefore denied the equal protection of the laws is untenable for the reason that the Alien Land Law applies the same presumption to all persons taking property in their own name when that property is paid for by an ineligible alien.

The provision of the Alien Land Law is this:

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof."

It is elementary that the guaranty of "equal protection of the laws" is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

St. John v. New York, 201 U. S. 633, 50 L. Ed. 896, 26 Sup. Ct. 554, 5 Ann. Cas. 909;

Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. Ed. 921, 30 Sup. Ct. 676, 47 L. R. A. (N. S.) 84;

Mobile etc. R. Co. v. Turnipseed, 219 U. S. 35, 55 L. Ed. 78, 31 Sup. Ct. 136, 32 L. R. A. (N. S.) 226, Ann. Cas. 1912A 463;

Mondon v. N. Y., N. H. & H. R. R. Co., 223 U. S. 1, 56 L. Ed. 327, 32 Sup. Ct. 169, 38 L. R. A. (N. S.) 44.

The reasonableness of the discrimination against persons receiving title to land paid for by ineligible aliens will be elaborated at a later point in this brief. That the Alien Land Law would cause the same presumption to arise if Kajiro Oyama had caused title to be placed in Fred Johnson's name is perfectly clear from the wording of Section 9 quoted *supra*, and is admitted by the appellants at page 23 of their brief. Though such a situation is labeled unrealistic, petitioners have cited *Cockrill v. California*, 268 U. S. 258, a case in which just such a situation occurred. (Br. for Pet. p. 20.) Again, at the risk of undue repetition, it is well established that the "equal protection" clause does not prohibit legislation which is limited either in the object to which it is directed or by the scope within which it is to operate. It

merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed.

Hayes v. Missouri, 120 U. S. 68, 30 L. Ed. 578,
7 Sup. Ct. 350;

Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254,
42 Sup. Ct. 124;

Barbier v. Conholly, 113 U. S. 27, 28 L. Ed. 923,
5 Sup. Ct. 359.

Since the hypothetical Mr. Johnson is not subject to the Alien Land Law until he receives title to property paid for by an ineligible alien it is submitted that his inter-family property transactions are of no interest to this Court.

In answer to petitioners' contention that the proof expected of a person taking title to land paid for by an ineligible alien is well-nigh impossible of attainment, such a statement completely disregards the construction placed upon Section 9 of the Alien Land Law. In *People v. Fujita*, 215 Cal. 166, at 171, it was held as to the presumption above quoted:

"But the presumption is recognized as disputable and as disappearing in the face of contrary evidence of sufficient strength to meet our rule on conflict of testimony."

In the *Fujita* case the California Supreme Court upheld a finding of the trial court that a conveyance of real property to four citizen children of an ineligible alien constituted a *bona fide* gift and that consequently there was no basis for escheat under the Alien Land Law, even though said property was paid for by the ineligible alien

parent. In view of the language of the California Supreme Court quoted above, it must be assumed that had the trial court in the instant case been satisfied that the evidence outweighed the presumption, the judgment would have been for the defendants and such judgment would have been affirmed by the California Supreme Court. The *Fujita* case is distinguishable from the instant one because of the finding by the trial court in that case that the gift was a *bona fide* one.

Although it is improbable that this Court will reweigh the evidence supporting the finding of the trial court in the instant case, petitioners' specific criticisms of the evidence are readily answered. The first item of evidence referred to by petitioners is set forth on page 13 of their brief:

" . . . the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, . . . "

The basis for regarding this as persuasive evidence is clearly set forth in the statement of the trial court at the conclusion of the trial [R. 101]:

"Now, in the absence of any evidence that the motives and conduct of a person of Japanese citizenship is any different from that of one of our own citizens, I should draw whatever inferences as to motive that there are to be drawn on the same basis and for the same reason that I should draw them if the person involved was a white American citizen. In the first place, looking at this situation with reference to the guardianship matter, it is to be noted that the guardianship proceedings were instituted at a time when the minor, Fred Oyama, was seven, I

believe—either seven or eight years of age. Now, in our ordinary dealings we just don't do that sort of thing unless there is a good reason [Fol. 181] for it. Why should I, for instance, have taken title to real property in my son's name when he was seven or eight years of age, thereby *putting it beyond my power to deal with it directly*, to deed it away, to borrow money on it and to make free disposition of it in any other way that I saw fit to do so unless there was a good strong reason why I should do that. We just don't do that sort of thing and people generally do not do that sort of thing. So, rather than to draw the inference that the property was put into the seven year old boy's name in order to provide for a college education for him, or something of that kind, I think that the more reasonable inference to draw would be that there was some other good reason for doing that very thing. (Italics applied.)

It is conceded that there are cases in which an ineligible alien father may wish to make a *bona fide* and therefore legal gift of land to his citizen child, but, it is at least as probable that an ineligible alien desiring to acquire and own land in violation of the Alien Land Law would fraudulently go through the motions of making a gift to a child while actually having no intent whatsoever of making a *bona fide* gift. Such an action being open to two reasonable constructions, the law of California, even without the aid of the presumption called for by Sec. 9 of the Alien Land Law, clearly provides that the less favorable construction be made in cases where de-

defendants refuse, as in this case, to testify as to the true nature of the transaction.

Bertelsen v. Bertelsen, 49 Cal. App. (2d) 479;

Winkie v. Turlock Irrig. Dist., 24 Cal. App. (2d) 1.

The reference to *Estate of Yano*, 188 Cal. 645, 206 Pac. 995, made at page 15 of petitioners' brief includes the word "confessedly."

"The act of petitioner, in securing conveyance of land to his daughter, while *confessedly* carried out because the laws of California did not permit him to buy it for himself, . . ." (Italics supplied.)

which word alone is sufficient to distinguish that case from the instant one.

Legal arguments may be sound when made in a case where the trial court is given the benefit of the testimony of the principals as to their intent and yet be totally irrelevant in a case such as this, where the unexplained refusal of the defendant to testify properly gives rise to the inference that they refused to testify because the truth, if made to appear, would have been adverse to them.

As to the second item of evidence discussed by petitioners at page 16 of their brief; namely, " . . . the father's failure to file the reports required of a guardian," a quotation from the record [R. 102] may be helpful. It shows that the trial judge did not give a great deal of

weight to this, and also indicates that he placed considerable emphasis on the failure of the defendants to testify.

"I note that counsel argued that we shouldn't give much, if any consideration, to the fact that the law has not been complied with in the filing of the required reports and accounts. I cannot agree with counsel about that because if good faith was present in the mind of the guardian it is more likely than not that he would have in all respects complied with the requirements of law in connection with the guardianship and his failure to do so probably adds some strength to the theory of the plaintiff in this case—not a great deal because sometimes people who are not informed as to the requirements of the law in connection with those matters simply fail to do the thing that the law requires them to do.

Furthermore, . . . the father, Mr. Oyama, has not offered himself as a witness in the case, and from his unexplained failure to offer himself as a witness the Court is required, as I understand it, to draw an unfavorable inference. If I am wrong about that I, of course, wouldn't mind being told that I was wrong, but I think that inference must be drawn from his failure to testify."

It has not been denied that the fact of compliance or failure of compliance with the requirement for filing reports constitutes evidence of intent as to the *bona fides* of the purported gift. Indeed, the court below held this to be evidence [R. 117]. What is complained of is that if Fred Oyama were Fred Johnson the intent would not matter. This is true, if Fred Johnson's father is not restricted in his right to acquire or own land. If the classification be a valid one, however, the intent of the ineligible alien goes to the very essence of the transaction.

whoever the purported donee may be. The carrying out of the law's requirements where it is claimed a gift was made is at least some evidence as to the intent, and what the real transaction amounted to. Any person occupying the same relationship to the transaction as the son Fred Oyama would be subject to the same requirements of *bona fides* on the part of the purported donor. The father, Kajiro Oyama, was in this case the guardian of both the person and estate of Fred Oyama [R. 54]. He was available to testify at the trial [R. 97-98], where he could have presented any explanation available for the failure to file any of the required reports. In the absence of *bona fides* and where the transaction was but a subterfuge no title could pass. The attempted acquisition was void as to the state. Fred was not called upon to be a "guarantor of his guardian's conduct." But the acts of his father determined whether he ever received any property by the transaction.

As held by the court below:

"Property which the citizen never had he could not lose, and as the land escheated to the state instant, he acquired nothing by the conveyance and the Alien Land Law took nothing from him." [R. 117.]

Petitioners' discussion as to the requirements for the filing of reports by a guardian under Section 4 (Br. for Pet. pp. 15, 16) can scarcely be said to amount to more than quibbling as to which section applies. The California Supreme Court [R. 111] specifically construed Section 5 of the Alien Land Law as directing the guardian to file in the office of the secretary of state and that of the county clerk annual reports describing the property and furnishing the other information and accounts required.

by the section. No reports were filed. [R. 83, 84.]. The question asked the county clerk as to whether any reports were filed in this instance referred to reports "by trustees, guardians and agents concerning property, or an interest therein, belonging to aliens mentioned in Section 2 of the Alien Property Initiative Act of 1920, and minor children of such." [R. 83.] Hence there was no misunderstanding as to what reports were referred to,—and there can be no question but that they were required.

As to the third item of evidence complained of by petitioners (Br. for Pet. p. 18), "... the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, ...", it is well established that this fact warrants an inference that if the defendants were to testify truthfully they would injure their case. The refusal of a party to appear as a witness amounts to a wilful suppression of evidence and may be given great weight by the trial court in determining the facts in issue. (*Bone v. Hayes*, 154 Cal. 759, 765; *People v. Adamson*, 27 Cal. (2d) 478, 493; *Leenders v. California Hawaiian etc. Co.*, 59 Cal. App. (2d) 752; *Bertelsen v. Bertelsen*, 49 Cal. App. (2d) 479, 493; *Winkie v. Turlock Irrigation Dist.*, 24 Cal. App. (2d) 1; and Cf. *Twining v. New Jersey*, 211 U. S. 78; 2 *Wigmore, Evidence*, (3d Ed.) 164.) There is, in fact, no other possible logical inference in view of the provisions of the Alien Land Law (Section 9) giving petitioners the right to show that a *bona fide* gift was made, thus overcoming the presumption of intent to avoid escheat, which is only a *prima facie* one. It has been pointed out earlier that the California Supreme Court held in *People v. Fujita*, 215 Cal. 166, 171, "... the presumption is recognized as disputable and as disappearing in the face of

contrary evidence of sufficient strength to meet our rule on conflict of testimony." Nothing is accomplished by the argument of petitioners [R. 17] that "Fred Oyama stands to lose his gift because of something that someone else has done," for it is perfectly clear that the principal issue of fact in the case was whether there ever was a *bona fide* gift to Fred Oyama. Nor were the petitioners unaware of the importance of this issue at the time of the trial. We quote Mr. Wirin's statements at the trial: "So far as we are concerned we claim, and we admit, that the central factual issue is the intent of the father" [R. 78], and, "By way of finality, we think the central situation is the good or bad faith of the transaction." [R. 80.] How then can petitioners now bottom their argument on an assumption that there was a *bona fide* gift after failing to place any of the defendants on the stand to testify as to this "central factual issue"? Nor is petitioners' statement that "the father never claimed any interest in the property." (Br. for Pet. p. 17) sufficient excuse for this refusal to submit evidence. Surely it is not contended that the father, the guardian of both the person and estate of the son, was so disinterested or so completely apathetic that it mattered not to him whether the State or his son got the land.

As to the fourth item of evidence relied upon by the trial court, ". . . the presumption created by Section 9 of the Alien Land Law" which is criticized by petitioners at page 17 *et seq.* of their brief, this Court has held that "The establishment of presumptions and of rules respecting the burden of proof is clearly within the domain of the state governments."

The limitations as to presumptions have been defined by this Court as follows:

"That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.

"If a legislative provision not unreasonable in itself, prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U. S. 35, at 43.

It is perfectly clear that there is, in the instant case, a rational connection between the facts established, *i. e.*, that the land was paid for by an ineligible alien and the title taken in the name of a citizen, and the presumption raised by the Alien Land Law that the transaction was with intent "to prevent, evade or avoid escheat." (Sec. 9.) There are only two explanations for such a transaction which appear rational and probable. These are, first, that the transaction was a subterfuge, employed to conceal the attempt of the ineligible alien to acquire land for his own

beneficial use, in violation of the Act. This, of course, was the finding of fact made by the trial court and upheld by the California Supreme Court.

"The trial court's findings in regard to the violation of the statute are fully supported by the evidence. . . . Indeed, this evidence convincingly points to the conclusion that the minor son had no interest in the property, his name being used only as a subterfuge for the purpose of evading the Alien Land Law." [R. 117, 118.]

The other possible explanation of the transaction is that of a *bona fide* gift to the son. This was not established by the petitioners—in fact, there was scarcely any attempt made.

If, as stated by this Court in the *Turnipseed* case, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate, how can it possibly be said that the presumption of one rather than the other of two possible explanations of the acts of the ineligible alien is irrational or so unreasonable as to be a purely arbitrary mandate?

Petitioners' argument (Br. for Pet. pp. 17, 18) that under the presumption provided for by Section 9 "Fred Oyama could never receive a gift of land from his father" plainly stems from their failure to interpret Section 9 in its entirety. Section 9 provides for escheat "if the conveyance is made with intent to prevent, evade or avoid escheat *as provided for herein*." (Italics supplied.) Section 2 of the Alien Land Law makes it clear that escheat is "provided for herein" only if ineligible aliens seek to

"acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state . . .",—not when they seek to make a *bona fide* gift. In addition to the clear import of the law's wording, the California Supreme Court in the case cited extensively by petitioners (*Estate of Yano, supra*), has interpreted the Alien Land Law as clearly permitting a citizen child to be the donee of land paid for by an ineligible alien.

"The act of petitioner in securing conveyances of land to his daughter, while confessedly carried out because the laws of California did not permit him to buy it for himself, was in no sense unlawful since the daughter is a citizen of the United States and entitled to acquire and own real estate."

Estate of Yano, 188 Cal. 645, 650.

See, also,

People v. Fujita, 215 Cal. 166.

That the presumption in question is not artificial or unreasonable is supported by the close analogy in the California law to cases involving transfers which are deemed fraudulent as to creditors. In the parallel case where Fred Johnson's father makes a transfer to Fred Johnson, a minor son, if we add the further fact that Fred Johnson's father is at the time of transfer indebted and the transfer makes him insolvent, we immediately find that Fred Johnson may be deprived of the attempted gift by action of his father's creditors and that in some cases the presumption of his father's fraud and bad faith would

be conclusive,—and in every case the question of his father's bad faith will be one of fact for the court. If we add the further circumstance that his father's lawyer keeps Fred's father out of court so that the most direct evidence concerning the father's bad faith, namely, his own testimony, is not made available for the enlightenment of the trial court, it is submitted that the inference of fraud becomes overwhelming, not altogether as a matter of statutory presumption but largely as a matter of inescapable logical inference.

The California statutes bearing on transfers in fraud of creditors are Civil Code sections 3439 through 3440.5. Sections 3439 through 3439.12 embrace the Uniform Fraudulent Conveyance Act, which has been adopted by numerous states. Section 3440 is a bulk sales law which contains a conclusive presumption that transfers of retail stocks other than in the ordinary course of trade and without the recording and publishing of notice are fraudulent.

The California cases are full of instances where transfers from husband to wife or parent to child have been held to be fraudulent. *Swartz v. Hazlett*, 8 Cal. 118; *Lander v. Beers*, 48 Cal. 546; *Evans v. Sparks*, 170 Cal. 532; *Bufkin v. Cline*, 180 Cal. 381; *Union Central Life Ins. Co. v. Flicker*, 101 F. (2d) 857.

It is submitted that the Uniform Fraudulent Conveyance Act and the cases decided thereunder establish that it is not constitutionally improper to support a public policy, valid for other purposes, by a statutory presumption which makes that policy workable and effective.

Petitioners' attempt (Br. for Pet. pp. 21, 22) to distinguish *Cockrill v. California*, 268 U. S. 258, in which this Court upheld the validity of this presumption, not only lacks persuasiveness, but demonstrates that the use of the presumption under circumstances such as those in the instant case, is even more valid. There the title to the land paid for by the ineligible alien was taken in the name of a citizen not related to the alien—a "stranger" to use the expression of petitioners. In the light of ordinary experience it seems clear that a presumption held to be reasonable and valid in such a case must with greater reason be held valid where the title is taken in the name of a citizen child of the ineligible alien, for the chances of successfully defying detection of the subterfuge and violation would be far greater in the latter instance than in one where the name of a stranger, over whom the alien might have little or no control, was used. It would seem, therefore, that the language of this Court in the *Cockrill* case (at 261, 262) is most apposite here:

"It is not, and could not reasonably be suggested that the statute is repugnant to the due process clause. It does not operate to preclude any defense. The inference that payment of the purchase price by one from whom the privilege of acquisition is withheld, and the taking of the land in the name of one of another class, are for the purpose of getting the control of the land for the ineligible alien is *not fanciful, arbitrary, or unreasonable*. *There is a rational connection between the facts and the intent authorized to be inferred from them.*"

"The statute is not repugnant to the equal protection clause. The rule of evidence applies equally and without discrimination to all persons—to citizens and eligible aliens as well as to the ineligible.

Plaintiffs in error maintain that invalidity results from the fact that, where payment of the purchase price is made by an ineligible alien, the law creates a presumption of a purpose to prevent, evade, or avoid escheat, while no such presumption arises where such payment is made by a citizen or eligible alien. But there are reasonable grounds for the distinction. Conveyances to ineligible Japanese are void as to the state and the lands conveyed escheat. *Payment by such aliens for agricultural lands taken in the names of persons not of that class reasonably may be given a significance as evidence of intent to avoid escheat not attributable to like acts of persons who have the privilege of owning such lands.* The equal protection clause does not require absolute uniformity, or prohibit every distinction in the laws of the state between ineligible aliens and other persons within its jurisdiction. The state has a wide discretion and may classify persons on bases that are reasonable and germane. *Truax v. Corrigan, 257 U. S. 312, 337.*" (Italics supplied.)

We think no more complete answer than the foregoing quotation from the decision of this Court could be made to the so-called Fred Oyama-Fred Johnson argument advanced by the petitioners.

II.

The Alien Land Law Is a Constitutional Exercise of Police Power.

Following their argument that the Alien Land Law as it affects Fred Oyama, the citizen son, is unconstitutional, petitioners make the contention that the law is unconstitutional on its face. (Br. for Pet. pp. 23-29, incl.) It is their claim (1) that the law is race legislation and (2) that it is, in purpose and administration, an anti-Japanese law.

It is to be borne in mind throughout that the classification of the California Alien Land Law is that of eligibility to citizenship. There is nowhere in the statute a single reference to race, color, creed or place of birth or allegiance. Its provisions are simple and direct—all aliens having the right to become citizens may own and control land in California; other aliens may not. (Secs. 1, 2, Alien Land Law.) This Court has stated in clear and positive terms that:

"Two classes of aliens inevitably result from the Naturalization Laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership. . . ."

Terrace v. Thompson, supra, at p. 220.

And in the same decision the assurance is given, also at page 220:

" . . . it is not to be supposed that its acts (those of Congress) defining eligibility are arbitrary or unsupported by reasonable consideration of public policy.

"The state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable."

These are the plain and positive assurances upon which the state has relied. They invest the findings and determinations made in the enactment of these laws with a dignity and integrity which are not to be challenged with charges of "racist" motives. They import to the definition of the right to become a citizen something far more searching and real than petty prejudices addressed to color of skin, form of worship or place of nativity. We are assured that the considerations are matters of real substance, bearing a sound relationship to basic standards of qualification for good citizenship in this nation.

It is a fact that since the original Naturalization Act of 1790 the designation of those eligible to become citizens has been successively broadened. It may one day be so broadened as to include all peoples of the earth. On the other hand, critical exigencies of the future may, within the realm of possibility, indicate and bring about a narrowing of this privilege by our nation—perhaps from considerations not heretofore encountered. In either event we are assured that the rule laid down will have "substantial and reasonable considerations" as its basis, which are not "arbitrary or unsupported by reasonable consideration of public policy." They will bear a distinct relationship to qualifications of loyalty, devotion and the capacity and desire to serve the welfare and success of our nation and its form of government.

This is the classification made by California in its statute. It embodies the elements regarded by the State as sound and conducive to its welfare and safety. What

could constitute a more sound or basic classification? To whom could or should a state look for its determination other than that body invested by the Constitution with the power to define it? Is this Court to now say that findings and determinations made by the Congress are arbitrary, capricious or the result of stupid prejudice based upon racism?

1. In the instant case petitioners are interested in the Alien Land Law as it affects the Japanese people. While at the time of its enactment those ineligible to citizenship included all except free white persons and persons of African descent and while even with the subsequent narrowing of the ineligible class a substantial portion of the world's population still remains ineligible, their claim is that this law is "purely racist—anti-Japanese—legislation."

As for "purely racist" motives, by which term petitioners seek to characterize the California law, we say, as we have said before, that we have neither the desire nor do we believe we are under any necessity to excuse or defend an attitude or purpose such as that sought to be ascribed by petitioners and made the focal point of their contention. It must have been made apparent to petitioners by this time that "racism," with the odious implications which that term conveys, is not nor can it be claimed as a factor motivating enactment of this law—regardless of what petitioners would have us believe. In the State's Brief in Opposition to Petition for Writ of Certiorari (p. 12) we made this statement:

"Race prejudice and race hatreds, as such, are ugly things."

That statement is here reaffirmed, and it may be added that these things are stupid as well. We think there is no

place in the concept of our form of government for prejudices or hatreds of the kind which petitioners would impute to the electors of California.

What we are considering here is a classification of those given the right to own land, based upon eligibility to become a citizen of this nation, a standard than which we can conceive nothing more inherently related to loyal allegiance and desire to work for the success and welfare of the State.

Petitioners allege that both in its genesis and in its subsequent history the statute was aimed at the Japanese people. The classification embraced many Orientals. It is true that the Japanese came in greater numbers following the turn of the century. Chinese have not been admitted to immigration in any substantial numbers for a long period (compare the Chinese Exclusion Acts of 1880, 1882, 1888, and 1892). Hindus, Malaysians, Indonesians, Polynesians, Burmese, and various other Asiatic peoples never have been present in numbers anywhere near approaching those of the Japanese immigrants. In spite of the so-called "Gentlemen's Agreement" entered into in 1908, Japanese immigration was not materially reduced until the Immigration Act of 1924. Accordingly, although the other peoples above-mentioned constituted a part of the classification made in the Alien Land Law, and were, of course, equally subject to its rule as to land ownership, it was natural and it may be agreed that the large-scale immigration of the Japanese people and what the Tolan Report¹ refers to as "Japan's plan of peaceful infiltration", concerning which there was much discussion and as to

¹Tolan Report, *supra*, p. 83.

which by far the greater number of references are made in the writings upon this subject, occupied the center of the stage.

That the Oriental peoples were quite firmly ensconced in 1922, through their occupancies of substantial areas in the richest agricultural lands of the State, is shown by maps depicted in the publication "*California and the Oriental*, Report of State Board of Control of California" (California State Printing Office, 1922). Copies of these maps showing such occupancies, together with a relief map of the State of California and an accompanying legend are contained in Appendix "B" to this brief (p. 7).

Viewed in the light of these conditions, we think it is not difficult to understand the concern of the California citizenry occasioned by the expanding entrenchment throughout the state of Oriental peoples who could not become citizens. That there were more of Japanese than of any other peoples affects the subject only as of degree. The legislation set up the restraint against *all* who could not be bound by the oath of allegiance.

In the instant case petitioners are interested in the statute as it affects the Japanese peoples. While it has not been our desire nor do we deem it necessary to single out any one of the peoples among those falling within the classification—that circumstances and factors existed with relation to those here involved which may reasonably have been considered in the adoption of this law is demonstrated in the "*Brief of the United States*" in *Hirabayashi v. United States*, 312 U. S. 52. The portion of the Government's brief referred to is printed as Appendix "C", *infra* (p. 9).

The opinion of Chief Justice Stone in *Hirabayashi v. U. S.*, *supra*, p. 96 *et seq.*, sets forth reasons, other than so-called "racist" ones, which we believe it will be conceded furnish a rational basis for the Alien Land Law.

2. The question of discriminatory enforcement.

Petitioners (Br. for Pet. pp. 29-32) make the charge that the policy of administration was to enforce the Alien Land Law only against the Japanese. As stated in the State's Brief in Opposition (p. 18) this assertion might be answered by the statement that the Japanese constituted the offenders. Congress has admitted almost no Chinese since the Chinese Exclusion Law of 1882. Filipinos have never been forbidden to own land in California. (*Alfara v. Fross*, 26 Cal. (2d) 358.) Hindus have in fact violated the Alien Land Law, although not so persistently as have the Japanese, and have been prosecuted for violations when violations were discovered. In the table set forth as Appendix B of petitioners' brief the statistical data as to escheat proceedings against Hindus is in error. No such proceedings are shown in this table since 1924 and it is stated (Br. for Pet. p. 29) that every one of the escheat cases filed since Pearl Harbor was filed against Japanese. This statement is incorrect. There are to our knowledge at least three escheat proceedings against Hindu defendants now pending trial in one county alone. These, of which we have a record, are *People v. Sigera*, Fresno County Superior Court No. 74085; *People v. Sigera*, Fresno County Superior Court No. 74088; *People v. Singh*, Fresno County Superior Court No. 74624. Other cases in which Hindus are believed to have violated the Alien Land Law are to our knowledge under investigation in several other counties. Whether escheat proceedings are

filed in every instance depends entirely upon the facts disclosed in the particular case.

Bare assertions as to numbers of cases or nationality of defendants, made without any knowledge of the facts involved, cannot furnish criteria for either an understanding of or any fair inference as to the circumstances encountered or the action taken in each case. We have yet to have any instances pointed out in which the administration of the statute has been discriminatory. Where violations of the law have been discovered, proceedings have been commenced—as directed by its provisions. We think that no apology is required for the performance of sworn official duty.

That in the past there have been periods when enforcement of the law was lax, and even non-existent, and that this may be attributable to a lack of response to duty on the part of public officers cannot be said to affect in any wise the constitutionality of the statute.

And that, as to offenders among the Japanese, there was during the late thirties and prior to Pearl Harbor no enforcement by the filing of escheat proceedings, said to be in deference to what was referred to as the National policy to refrain from any acts which might be regarded as unfriendly to the Japanese people, can scarcely be made the subject of criticism by petitioners,—nor is it any indication that the law applied to Japanese alone. (Br. for Pet. p. 30.)

In short, petitioners' argument as to discriminatory administration reduces itself to the complaint that the escheat proceedings filed were predominately against offenders among the Japanese. They do not claim that such proceedings were not based upon adequate statutory grounds.

Their objection is that there were not as many violations discovered among other ineligible aliens justifying the filing of escheat proceedings. The answer is that this question is not the subject of mathematical comparisons. The law set up the classification of eligibility to citizenship, and the relative numbers of the different members of that class violating the law are not determinative as to whether it is discriminatory.

3. Following their argument on the claim of discriminatory administration petitioners make the contention that the Alien Land Law, "as an anti-Japanese law," violates the Fourteenth Amendment. (Br. for Pet. pp. 32-39.) Here again, in the face of what this Court has held to be a valid classification, they state that "one small group of aliens—the Japanese—is singled out and forbidden to own land." In addition they complain that by the abrogation, in 1940, of the Treaty of Commerce and Navigation of 1911 between Japan and the United States (37 Stat. 1504) the right therein reserved "to lease land for residential and commercial purposes" and to own houses, warehouses, manufacturies and shops was destroyed. In construing the effect of the abrogation of the Treaty the Attorney General of California recently held (August 25, 1947) (Op. Cal. Atty. Gen., Vol. 10, Number 4, p. 90) that, inasmuch as the Alien Land Law (Sec. 2) incorporated therein, and made a part thereof the provisions of any treaty existing at the time of its enactment, the subsequent abrogation of the treaty did not affect these rights.

In claiming a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment petitioners (Br. for Pet. p. 35) state the general rule as to legislative classification, citing *Atchison, T. & S. F. R. R. v. Mathews*,

174 U. S. 96; *Southern Ry. v. Greene*, 216 U. S. 400; *Frost v. Corp. Comm.*, 278 U. S. 515; *Smith v. Cahoon*, 283 U. S. 553; *Old Dearborn Co. v. Seagram Corp.*, 299 U. S. 183. Conceding the correctness of the general rule stated, we invite attention to a recent decision bearing a close relation to the subject here. In *Asbury Hospital v. Cass County, N. D.*, 326 U. S. 207, this Court held, at p. 214:

"The legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made. *Metropolitan Ins. Casualty Company v. Brownell*, 294 U. S. 580, 583, 55 S. Ct. 538, 540, 79 L. Ed. 1070, and cases cited."

And at page 215:

"Statutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose, and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357, 36 S. Ct. 370, 374, 60 L. Ed. 679, L. R. A. 1917A, 421, Ann. Cas. 1917B, 455; *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 509, 57 S. Ct. 868, 872, 81 L. Ed. 1245, 109 A. L. R. 1327, and cases cited."

Petitioners make the mistake of relying, as authority for their statement that the usual presumptions in favor of legislative classification do not apply here, upon *Thomas*

v. Collins, 323 U. S. 516. In that case it was pointed out by this Court that the "fundamental liberties" were the freedoms of speech, press, assembly and worship guaranteed by the First Amendment. We have yet to find any authorities holding the right to own land to be included in these liberties.

The cases cited by petitioners (Br. for Pet. p. 36) are distinguishable from the instant case in that the Alien Land Law on its face and in its administration is a clearly constitutional exercise of the State's police power, whereas the cases cited by petitioner do not meet this test. *In re Ah Chong*, 2 Fed. 733 (C. C. D. Calif. 1880) involved a statute which prohibited fishing by "aliens incapable of becoming electors of this state." Since it was obvious on the face of the law that no reasonable grounds existed for making the distinction called for by the law, it was properly held to be unconstitutional. The same conclusion as to a classification based on eligibility to citizenship with regard to ownership of land cannot be reached.

Yu Cong Eng v. Trinidad, 271 U. S. 500, cited by petitioners (Br. for Pet p. 36) involved a law regulating merchants, a "common occupation." This Court has recognized that there is a valid distinction between the ownership of land and the regulation of "common occupations." In *Terrace v. Thompson*, 263 U. S. 197, it was held (at p. 221) :

"In the case before us, the thing forbidden is very different. It is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the state."

Yick Wo v. Hopkins, 118 U. S. 356, is clearly distinguishable from the instant case. In that case the fatal defect in the law was that it vested in municipal authorities an absolute discretion to grant or withhold laundry licenses with practically no regard for any fixed standards whatsoever. In the language of Mr. Justice Mathews:

"The power given to them [the board of supervisors which had the power to grant or deny licenses] is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is *purely arbitrary*, and acknowledges neither guidance nor restraint." (*Italics supplied.*)

Yick Wo v. Hopkins, 118 U. S. 356, 366.

Secondly, even were it to be conceded that all of the recent cases in which the Alien Land Law has been enforced have involved Japanese aliens (which is not true), there is absolutely no parallel between such facts and the situation that led this Court to hold that the administration of the ordinance involved in the *Yick Wo* case violated the commands of the Fourteenth Amendment. The facts in the *Yick Wo* case make this entirely clear. Of some 320 laundries in San Francisco, 310 were located in frame buildings. Of the 310, 240 were owned and run by subjects of China. With reference to the inability of the Chinese to obtain licenses to operate, the Court said:

"And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happen to be Chinese subjects, eighty others, not Chinese subjects,

are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified."

Yick Wo v. Hopkins, supra, at 374.

Hill v. Texas, 316 U. S. 400, cited by petitioners, is even more distinguishable from the present case than the others, since what was there involved was the inhibition of the Fourteenth Amendment as applied to racial discrimination in the selection of a grand jury, there being no statute whatsoever which warranted such a classification. There is, under the Alien Land Law, a reasonable classification of persons ineligible to citizenship. *Hill v. Texas* is not in point. That the quotation from *Holden v. Hardy*, 169 U. S. 366, 398, relied upon by petitioners (p. 37) sheds no light on this case is evident from the statement and citations contained in the sentence which immediately follows the quotation abstracted by petitioners. That sentence is:

"The distinction between these two different classes of enactments cannot be better stated than by a comparison of the views of this court found in the opinions in *Barbier v. Connolly*, 113 U. S. 27, and *Soon Hing v. Crowley*, 113 U. S. 703, with those later expressed in *Yick Wo v. Hopkins*, 118 U. S. 356."

The *Barbier* and *Soon Hing* cases merely held that a municipal ordinance prohibiting laundry work in public laundries during the night hours was a valid and Constitutional exercise of police powers. The *Yick Wo* case has been shown to be clearly distinguishable, as an investiture of totally unrestrained power.

As against the continuously repeated assertions of petitions as to "racist" and "anti-Japanese" discrimination we point to the decisions of this Court which have given complete judicial sanction to the classification here challenged.

Before passing to petitioners' next point we refer, as evidence of a spirit of fairness and desire to afford a means of clarifying uncertainties, to a California statute in which the state permits herself to be sued by any person claiming an interest in the real property in question to determine whether an escheat has occurred under the provisions of the Alien Land Law. (Statutes 1945, Ch. 1363.) This Act is printed as Appendix "D", *infra*, p. 20. All that is required in such a suit, which is in the nature of a quiet title action, is that the complaint describe the property and specify the instrument or instruments in the chain of title which gave rise to the possibility of such escheat. While no reference to the printed record is available, the files of the Attorney General's office show that, in over two score of such cases filed, only one case has been contested thus far. After due investigation, if it is found that under facts or the law no escheat has occurred a disclaimer is filed, as authorized by the Act.

III.

**The Prior Decisions of This Court Are Sound and
Should Neither Be Overruled Nor Declared to Be
No Longer Applicable.**

1. Petitioners devote the major portion of their Point III (Br. for Pet. p. 39 *et seq.*) to an attack upon this Court's holdings in *Terrace v. Thompson*, 263 U. S. 197, to which the California cases *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313, and *Frick v. Webb*, 263 U. S. 326, refer. The substance of their attack is that they disagree with the decision. In seeking to disparage it they call its statements "not only unconvincing but meaningless." (Br. for Pet. p. 43.)

In so doing they make themselves authority for a statement that the fact that "one who is not a citizen and cannot become one" bears no relation whatever to his "interest in and power to work effectively for the state." As opposed to what this Court has held, their position is that "the quality and allegiance of those who own, occupy and use farm lands" cannot be regarded as matters of any importance to the "safety and power of the state,"—to say that they are is "meaningless."

What petitioners' contention reduces itself to is that this Court was totally lacking in sound concept when it ascribed the importance it has to either the status of citizenship or the relationship which the ownership of its land bears to the welfare and safety of a state. To deny to bonds of allegiance, and the right to be bound by such bonds as well, all significance and meaning as related to loyalty and the desire and ability to effectively work for the success of the state, and to hold that the ownership of the very soil itself is devoid of all relation to the state's

welfare and continued safety could result in a marked de-vitalization of the entire citizenry.

Any speculative comparison of a possible loyalty of one ineligible to become a citizen with a possible lack of loyalty on the part of one already a citizen or at least eligible to become such involves a question of the person equation, an individualized attitude of heart and mind—something as to which classifications upon a reasonable basis cannot be and are not required to be infallible.

Patson v. Pennsylvania, 232 U. S. 138.

Petitioners' reference (Br. for Pet. p. 44) to the State's Brief in Opposition as containing "echoes of old prejudices" is ill-advised. Respondent did there refer to the decision of the Circuit Court of Appeals in *Terrace v. Thompson* (274 Fed. 841, at 849), but for the specific purpose of showing that it was plain that "questions as to race or color, as such, played no part as a determining factor in the classification," and that what was looked to were basic concepts and underlying tendencies of deep significance and importance, as a result of which it was said that these people were not fitted or suited to make for the success of our form of government. Nor are the "solidarity" and the "lack of assimilation", referred to in our Brief in Opposition, terms originated or theretofore employed by us. They were employed in a noteworthy decision of this Court, *Hirabayashi v. United States*, 320 U. S. 81, to which particular attention is now called. We think that this decision, which recognizes not only matters of demonstrated factual existence but matters which may have reasonably been believed to give rise to concern, demonstrates plainly that the adoption of the Alien Land Law did not transgress constitutional limitations.

In *Hirabayashi v. United States*, *supra*, at 96, Mr. Chief Justice Stone, speaking for the court in an opinion from which there was no dissent, although three Justices separately concurred, stated with great candor, fairness and liberality those considerations other than race which justified a military curfew regulation made applicable to Japanese and Japanese-Americans. The Chief Justice's statement of such reasons is as follows:

"There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population. In addition, large numbers of children of Japanese parentage are sent to Japanese language schools outside the regular hours of public schools in the locality. Some of these schools are generally believed to be sources of Japanese nationalistic propaganda, cultivating allegiance to Japan. Considerable numbers, estimated to be approximately 10,000, of American-born children of Japanese parentage have been sent to Japan for all or part of their education.

"Congress and the Executive, including the military commander, could have attributed special significance, in its bearing on the loyalties of persons of Japanese descent; to the maintenance by Japan of its system of dual citizenship. Children born in the United States of Japanese alien parents, and especially those children born before December 1, 1924, are under many circumstances deemed, by Japanese law, to be citizens of Japan. No official census of those whom Japan regards as having thus retained Japanese citizenship is available, but there is ground for the belief that the number is large.

"The large number of resident alien Japanese, approximately one-third of all Japanese inhabitants of the country, are of mature years and occupy positions of influence in Japanese communities. The association of influential Japanese residents with Japanese Consulates has been deemed a ready means for the dissemination of propaganda and for the maintenance of the influence of the Japanese Government with the Japanese population in this country.

"As a result of all these conditions affecting the life of the Japanese, both aliens and citizens, in the Pacific Coast area; there has been relatively little social intercourse between them and the white population. The restrictions, both practical and legal, affecting the privileges and opportunities afforded to persons of Japanese extraction residing in the United States, have been sources of irritation and may well have tended to increase their isolation, and in many instances their attachments to Japan and its institutions.

"Viewing these data in all their aspects, Congress and the Executive could reasonably have concluded that these conditions have encouraged the continued attachment of members of this group to Japan and Japanese institutions. These are only some of the many considerations which those charged with the responsibility for the national defense could take into account in determining the nature and extent of the danger of espionage and sabotage, in the event of invasion or air raid attack. The extent of that danger could be definitely known only after the event and after it was too late to meet it. Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members

of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it."

It is true that the Chief Justice continued to say:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection."

It is to be noted that the statement made refers to "distinctions between citizens." There is here no such discrimination. As to aliens it has been a uniform national policy from the earliest days.

The Chief Justice's footnote (No. 4) is herewith reprinted as a summary of the kinds of discrimination which have been employed without offense to constitutional considerations:

"Federal legislation has denied to the Japanese citizenship by naturalization (Rev. Stat. 2169, 8 U. S. C. A. 703, 2 F. C. A. Title 8, 703; see *Ozawa v. United States*, 260 U. S. 178, 67 L. Ed. 199, 43 Sup. Ct. 65), and the Immigration Act of (May 26) 1924, excluded them from admission into the United States, 43 Stat. 161, c. 190, 8 U. S. C. A. 213, 2 F. C. A. Title 8, 213. State legislation has denied to alien Japanese the privilege of owning

land. 1 California General Laws (Deering, 1931), Act 261; 5 Or. Comp. Laws Ann. (1940), 61-102; 11 Wash. Rev. Stat. Ann. (Remington, 1933) 10581-10582. It has also sought to prohibit intermarriage of persons of Japanese race with Caucasians. Mont. Rev. Codes (1935), 5702. Persons of Japanese descent have often been unable to secure professional or skilled employment except in association with others of that descent, and sufficient employment opportunities of this character have not been available. Mears, Resident Orientals on the American Pacific Coast (1927), pp. 188, 198-209, 402, 403; H. R. Rep. No. 2124, 77th Cong. (2d) Sess. pp. 101-138."

The decision in the *Hirabayashi* case sustains a wartime curfew regulation applicable to *alien and citizen* of Japanese ancestry alike. The later decisions of the United States Supreme Court, *Ex parte Endo*, 323 U. S. 302, 89 L. Ed. Adv. Op. 219, and *Korematsu v. United States*, 323 U. S. 239, 89 L. Ed. Adv. Op. 202, deal with the rights of *loyal* citizens to freedom from arbitrary detention in relocation centers. We are here dealing not with citizens, but with aliens; not with loyalty, but with fraud and deceit found and determined after a fair trial in open court.

That at the time of the enactment of the Alien Land Law there was a rational basis therefore is abundantly demonstrated by Chief Justice Stone in the *Hirabayashi* case, in addition to the earlier decisions specifically construing the Alien Land Law. We also refer again for specific factual references to the "*Brief of the United States*" in the *Hirabayashi* case. (Appendix "C," *infra*, pp. 9-19.) And that there was realistic cause for concern by reason

of the well-entrenched position of those ineligible to become citizens is vividly shown by the maps depicted in Appendix "B," *infra*, p. 7, *et seq.*

While petitioners attack the statement in *Terrace v. Thompson, supra*, that it is within the realm of possibility that all the land within the state might pass to the ownership or possession of non-citizens as "meaningless" and "unreasonable," the fact of entrenchment in the richest agricultural, food-producing sections of California made by 1922 is not to be superficially dismissed. Who is there who can say what more alarming proportions would have been reached had not the restraint of the Alien Land Law been imposed,—and who will say that such control by aliens ineligible to citizenship might not have had serious consequences?

The fact the legislature of California in 1913 and the electors by initiative in 1920 passed this law, and the Supreme Court of California on numerous occasions unanimously and this Court unanimously have sustained the legislation, as well as the fact that nine other states have passed similar laws, are entitled, we believe, to the most careful consideration. And if the canon of construction that the proper test is not whether the Court accepts the reasoning which brought about the legislation as conclusive, but is, instead, whether the reasoning is such that the Court might admit the possibility that a rational mind could entertain such reasoning, the result is obvious.

Petitioners contend, however (Br. for Pet. pp. 48-49), that conditions have changed since the enactment of this law. We assume their claim to be that in the instant case, therefore, it cannot be enforced—even though the law when enacted were conceded to be valid.

The transactions in which the Alien Land Law was violated in this case were had in 1934 and in 1937, respectively. Under the statute (sections 7 and 9) these transactions by which the ineligible alien sought to acquire the lands were *void* as to the state and the lands immediately and automatically escheated to the state. See also opinion of the court below. [R. 117, 118.] At the time as of which the law is applicable in this case there had been no narrowing of the Naturalization Laws as to Orientals. Neither had there been any of the other changes mentioned by petitioners, with the exception of some natural deaths of ineligible aliens. Hence, it can scarcely be claimed that later changes could affect a valid law's application in this case. As pointed out by the court below [R. 118] in answer to the argument that a change in the requirements of naturalization by the 1942 amendment made Kajiro Oyama eligible to citizenship, the parcels of land here involved automatically escheated to the state in 1934 and 1937, respectively, and "Title vested in the state upon these dates, and later legislation has no effect upon that title." Were it even to be assumed that conditions and circumstances as of 1947 were *wholly* changed and that it were possible for a valid law to be thereby in some way affected, the result which occurred by reason of its operation at a time when such changes had not taken place and no cause existed for holding it defective would not be affected. This Court held in *Korematsu v. United States*, 223 U. S. 214:

"We uphold the exclusion order as of the time it was made and when the petitioner violated it."
(at p. 220.)

and

“We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified.” (at p. 224.)

But, aside from the lack of applicability of the “changed conditions” argument in the instant case, we are unable to agree, in the light of this Court’s clear and positive decisions, that a new era has been ushered in, when eligibility to citizenship in this nation may no longer constitute a reasonable basis for classification as to the right to own land. Would we thus be asked to assume that the Acts of Congress defining eligibility *are* “arbitrary and unsupported by reasonable considerations of public policy?” Is the assurance that “the state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable” to be regarded as shorn of its integrity and not to be relied upon?

The state has been told that, in the absence of treaty provisions to the contrary, it has the right to deny to aliens the right to own land within its borders, also that in the exercise of its powers of police it has wide discretion in determining its own public policy and what measures are necessary for its own protection “and properly to promote the safety, peace and good order of its people.” (*Terrace v. Thompson, supra*, at 217.)

The state has not here made an arbitrary classification. It has not said that Burmese or Japanese or Yugoslavs or that any other designated people may not own land in California. It has legislated upon the right to land ownership by reference to a recognized, basic classification,—that of eligibility to citizenship. True, the num-

ber of those embraced in the ineligible class has been *narrowed* by amendments of Congress to its Naturalization Laws. But who will say that the class may not be hereafter substantially *broadened* by Congress? Who will gainsay its right so to do? And by what yardstick are we to say that Congress has measured its action,—by one governed by likes or dislikes addressed to color of skin or form of worship? Certainly considerations far more penetrating than these control, considerations having to do with attachments to certain concepts of government and with abilities and desires to work for the success and preservation of ours.

We live in a realistic day. There are many citizens who have not yet had time to forget the shocks of disillusionment. They have yet to accept the view that the millennium is here—or that it is even imminent. They wonder just how sanguine or naive they are called upon to be in the face of events past and current. They recall what Mr. Justice Holmes said: “A page of history is worth a volume of logic.”

Two further arguments are advanced by petitioners. First, they suggest that the Alien Land Law is “perilously close” to invading the federal field in the area of international relations. (Br. for Pet., pp. 49, 50.) This ignores the fact that this law was designed to avoid this completely. It not only legislates in a field recognized by this Court as its exclusive province (whereas in *Hines v. Davidowitz*, 312 U. S. 52, the power to legislate was

concurrent and the Federal Government had occupied the entire field)—it accepts a primary federal standard in determining the class as to which the law operates. Furthermore, it has specifically honored and protected rights vouchsafed by treaties. Congress can at any time redefine ineligible persons,—or it abolish all ineligibility entirely. The State Department may negotiate treaties whereby the citizens of any contracting party may be extended unlimited rights to own land,—which treaties would clearly prevail over the Alien Land Law.

In *Clark v. Allen*, 67 Sup. Ct. Rep. 1431, 1439, this Court recently upheld certain sections of the California Probate Code which make the right of non-resident aliens to take by succession or testamentary disposition dependent upon the existence of a reciprocal right on the part of citizens of the United States to take property on the same terms and condition as residents and citizens of the other nation. These provisions were attacked upon the same ground as that suggested here; viz., that they constituted "an extension of state power into the field of foreign affairs, which is exclusively reserved by the Constitution to the Federal Government." This Court disposed of the contention as follows (p. 1439):

"What California has done will have some incidental or indirect effect in foreign countries. But that is true of many state laws which none would claim cross the forbidden line."

We think the finding applies here equally as in *Clark v. Allen*.

Finally, the reference of petitioners (Br. for Pet., 52, 53) to the United Nations Charter at the close of their argument lacks applicability for several reasons. First, and we believe conclusive, is the fact that this Charter was not enacted until long after the unlawful transactions took place and the land escheated to the State. As was held by the Court below with reference to a claim made (now abandoned) that the 1942 Amendment to the Naturalization Act made the elder Oyama eligible to citizenship: "The title vested in the State upon these dates (1934 and 1937), and the later legislation has no effect upon that title." [R. 118.] Second, we believe it has been shown that the Alien Land Law classification is not one based on "race," as such, and it clearly has nothing to do with "sex, language or religion." Third, we know of no construction of our courts, and have been referred to none, holding that the right to own land is embraced in the terms "fundamental freedoms" or "human rights." (Cf. *West Virginia State Bd. of Ed. v. Barnette*, 319 U. S. 624; *Thomas v. Collins*, 323 U. S. 516.) Finally, this question, assuming that there is one, was not raised below and cannot be here injected for the first time.

IV.

Limitation of Actions.

Petitioners allege (Br. for Pet. pp. 53-56) that California has imposed a newly added statute of limitations after its right of action had been completely barred, thereby disturbing vested rights.

It is not disputed that as a general proposition, and as stated in the language which petitioners quote from *Stewart v. Keyes*, 295 U. S. 403 (a case involving an act of Congress) that where a right of action has been completely barred by a statute of limitations an attempt by a legislature to revive the barred claim would amount to a deprivation of property without due process of law. This proposition is not here applicable for the following reasons:

1. Mere lapse of time does not bar a possessory action by an owner in California.

Again respondent emphasizes that Section 7 and Section 9 of the Alien Land Law, by the plain meaning of their language and as construed by the court below herein as well as in *People v. Nakamura*, 125 Cal. App. 268, provide that escheats shall be automatic and immediate. Title to parcel one in 1934 and to parcel two in 1937 passed to the State, as the California Supreme Court held, "*instantly*." From this it follows that the State, which became the owner at the times mentioned, succeeded to the same property rights as any other owner of real property. Such owners may in California bring possessory actions

which are not to be defeated by mere lapse of time or the running of statutes of limitations.

McKelvey v. Rodriguez, 57 Cal. App. (2d) 223;
Westphal v. Arnoux, 51 Cal. App. 532.

Instead the defendant must plead and prove as an affirmative defense that plaintiff's action is barred by adverse possession.

Reed v. Smith, 125 Cal. 491;
Warden v. Bailey, 133 Cal. App. 383.

The elements of adverse possession are clearly defined in the California cases as distinct from statutes of limitation.

At 1 Cal. Jur. 490 it is said the difference between statutes of limitation as they are known to the courts of law and the laws of prescription are: that the one confers a right and the other takes away a remedy.

Alhambra Addn. Water Co. v. Richardson, 72 Cal. 598;
Billings v. Hall, 7 Cal. 1;
Akley v. Bassett, 189 Cal. 625.

It is well settled that in California the elements of adverse possession are five:

1. Actual occupation
2. hostile to the true owner's title
3. held under a claim exclusive of any other right
4. continuous and uninterrupted
5. accompanied by payment of taxes.

1 Cal. Jur. 522;

Miller & Lux v. San Joaquin Power & Light Co.,
8 Cal. (2d) 427.

In the present case although an attempt was made to raise the statute of limitations by demurrer, the affirmative defense of adverse possession was not raised by answer. If there was a possibility of any claim being made by Fred Oyama here it must have been pleaded and proved as an affirmative defense of adverse possession. This was not done. In all of the cases where Section 315 of the Code of Civil Procedure has ever been applied against the state, the language of the decision speaks of adverse possession and not mere lapse of time.

People v. Kings Development Co., 177 Cal. 529;

People v. Center, 66 Cal. 551, at 565;

People v. Banning Co., 167 Cal. 643, at 650;

People v. Kerber, 152 Cal. 731 at 733, 734.

2. The case was correctly decided on the merits.

As to an alien ineligible to own, possess, occupy, control or otherwise enjoy land in California, it is submitted that the court below did no more than arrive at a reasonable and inescapable construction of the Alien Land Law in determining that as to such alien the statutes of 1913 and 1920 could not be reconciled with Section 315 of the Code of Civil Procedure, which was adopted in 1872. As to such alien the later and inconsistent act must control. How indeed could a period of continuous incapacity to own, possess or occupy add up after ten years to a secure title?

Indeed, Section 315 of the Code of Civil Procedure, when last before this Court in *Weber v. State Harbor Commissioners*, 85 U. S. 57, was held inapplicable in the face of other and later legislation inconsistent with it in purpose and legislative intent. After discussing the origin and theory of statutes of limitation and the presumption

created thereby, the decision points out that statutes of limitation are not held to embrace the state unless she is expressly designated, or necessarily included by the nature of the mischiefs to be remedied. Justice Field stated at pages 70-71:

"The statute of California is exceptional in this particular. It declares that the state will not sue for or in respect to real property, unless her title or right *has existed* within a prescribed time, or rents or profits have been received within that period. She thus allows a presumption to arise in favor of any occupant of her lands, and that presumption to become absolute, that she possesses no title or interest therein, if within that period no assertion of her title or interest is made. *But this presumption is rebutted when such assertion is made and it may be made by her as well by legislative act as by judicial proceeding.*" (Emphasis added.)

This "assertion" was held to have been made by the enactment of the harbor commissioners act—even though its provisions were wholly silent as to limitations of actions. The determining factor was that it was a public act, relating to a matter of public concern, and from it the intent of the legislature was clear, that no statute of limitations should operate to thwart its purpose. This is forcefully stated in the concluding paragraph of the decision (at p. 71):

"In the present case, the act creating the harbor commissioners and authorizing them to take possession and improve the water front, was a *public act relating to a matter of public concern, of which the complainant and all others were bound to take notice.* Hardly anything, which we can readily con-

ceive of, would be more expressive of the intention of the legislature that the state should conserve her title and interest in the whole water front of the city. In our judgment, it *prevented the complainant from acquiring the title of the state by operation of the statute of limitations; as effectively as if that statute had not been in existence.*" (Italics added.)

Just as the United States Supreme Court squarely based its decision that this limitation could not be invoked upon the intent of the act of the legislature in the *Weber* case, so is it clear that the policy and intent of the electors and the legislature in enacting the Alien Land Law has precisely the same effect here. The "matter of public concern" which gave rise to this public act, is clearly no less impressive or important than that of the harbor commissioners act—and all were bound in no less degree to take notice of it. The alien land law legislation has been held to "directly affect the public welfare and safety," indeed, to be "vital to the political existence of the State." (*Mott v. Cline*, 200 Cal. 434, 447.)

3. The statute of limitations is a local question of procedure.

As previously urged, California believes that the statute of limitations is a purely local issue, that no federal question is involved, and that the attempted federal question should not be here considered because it was not raised or presented below. True, there was voluminous briefing as to whether as a matter of local law the statute of limitations had run. There was, however, no suggestion that an adverse decision would deny due process or equal protection.

That local procedure may be decided by a state court without impinging on the federal domain is shown by

Preston v. Chicago, 226 U. S. 447;

Moran v. Horsky, 178 U. S. 205;

Wood v. Chesborough, 228 U. S. 672;

Harrison v. Myer, 92 U. S. 111;

Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287.

Applied specifically to statutes of limitation, this Court held in *Chase Securities Corporation v. Donaldson*, 325 U. S. 304, at 311-312:

"In *Campell v. Holt*, *supra*, this court held that where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment, and we agree with the court below that its holding is applicable here and fatal to the contentions of appellant."

In the opinion of the California Supreme Court [R. 119] it is made clear that at no time did petitioners enjoy any vested right, even as a right of repose. Petitioners cite *Stewart v. Keyes*, *supra*, a case in which Congress, not a state, attempted to revive an action

which was clearly and demonstrably barred, thereby denying due process. They also cite *Campbell v. Holt*, 115 U. S. 620, and *Chase Securities Co. v. Donaldson, supra*. Both of these cases support the right of legislatures to extend or repeal statutes of limitations where no vested rights have intervened. In the *Chase Securities* case even more was done, since the action there may possibly have been once barred when the intervening legislation gave it new vigor. This Court held:

“Whatever grievance appellant may have at the change of policy to its disadvantage, it acquired no immunity from this suit that has become a federal constitutional right.” (325 U. S. at p. 316.)

In the case at bar the California Legislature and Supreme Court [R. 119] have both declared, not that a bar should be lifted, either prospectively or retroactively, but instead that there *never was* a bar. This decision of local law, it is submitted, is not only intrinsically reasonable and entitled to respect from other courts as the authoritative declaration of the law of California,—it is entirely a local problem and was so regarded by both parties below.

4. The case as to Kajiro Oyama is moot.

It must here be again stressed that the positions of the father and son Oyama are essentially different. If the position consistently taken by the son be correct, if in fact he received a valid gift from his father, then he does not need any statute of limitations. California and

its law enforcement agencies, once they are convinced by investigation or judicial decision that he is the owner of property, will be zealous to protect his interest against all comers. As to the father, does not his disclaimer of any right or interest in the property logically remove his claim of the statute of limitations from the case? The son, if entitled by ownership or by adverse possession, does not need the statute of limitations, which has already been shown to be inapplicable to possessory actions brought by an owner. Petitioner Kajiro Oyama, having disclaimed all right or interest in the property, should not be heard on any issue in the case, since the court will not hear moot or feigned issues.

Market St. Ry. v. Railroad Commission, 324 U. S. 548;

Natural Milk Producers v. San Francisco, 317 U. S. 423;

Cincinnati v. Vester, 281 U. S. 439;

Liberty Warehouse Co. v. Burley Tobacco Growers, 276 U. S. 71.

In summary, as to the statute of limitations, the petitioners never acquired a vested right; the determination of the State Supreme Court that no statute runs in favor of an ineligible alien is a reasonable decision and is harmonious with the construction placed upon the California statute of limitations by this Court in *Weber v. Harbor Commissioners*, *supra*. Furthermore, the question was not preserved or presented in the courts below as a federal question.

Conclusion.

Wherefore, the decision below should be sustained.

Respectfully submitted,

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APPENDIX "A."

The California Alien Land Law (Alien Property Initiative Act of 1920, as amended, Stats. (1921), p. lxxxiii, in effect, December 9, 1920; amended by Stats. (1923) c. 441, p. 1020; Stats. (1927) c. 528, p. 880; Stats. (1943) c. 1003, p. 2917, c. 1059, p. 2999; Stats. (1945) c. 1129, p. 2114, c. 1136, p. 2177; Deering's Gen Laws, Act 267) provides in part as follows:

"Sec. 1. All aliens, eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state. (Amended by Stats. 1923, p. 1021.)

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. (Amended by Stats. 1923, p. 1021.)

* * * * *

"Sec. 4. Whenever any alien mentioned in Section 2 hereof is appointed by any court as a guardian of his native-born minor child or children, or as a guardian of any other person or persons, it shall be unlawful for such

said alien guardian to farm, operate or manage any land or lands held by such guardianship estate, except solely for the use and benefit of the ward or wards of said estate, or to enjoy, possess or have, in whole or in part, the beneficial use of any such said land or lands so held or possessed or which belong to any such said guardianship estate, nor shall said alien guardian have or enjoy or receive directly or indirectly the beneficial use of such said lands or the proceeds received from the sale of any crops produced, grown or raised thereon, it being the intent of this section that no alien mentioned in Section 2 hereof shall by any guardianship proceedings whatsoever evade or violate or seek to evade or violate any of the provisions of this statute.

"In all such said guardianship estates, the alien guardian must make every year a report to the court in which said guardianship estate is pending, showing in detail and supported by receipts, all money disbursed, expended and paid out by said guardian, to whom same was paid, for what purpose, and the date of such said disbursement or payment. Also all money received, from whom received, for what purpose received, and the date of the receipt thereof. A copy of said report shall be served by the guardian on the district attorney of the county, and said guardian shall give said district attorney notice of the hearing of said report. Failure on the part of the said alien guardian so to make such report, or serve such copy thereof, or notify such district attorney shall constitute a direct violation hereof, for which said guardian may be prosecuted and punished as set forth in Section 10a of this act.

"Said alien guardian shall include in such report such other matters and items as the court may require, the said

alien guardian to be under the absolute jurisdiction and control of the court at all times, and the court may from time to time require said alien guardian to make special reports on all things pertaining to said guardianship estate. The court may also require the ward of any such said guardianship estate to be produced in court whenever said court may deem such procedure necessary and proper for the protection of said guardianship estate.

“The court shall have the power to fix the compensation of the said alien guardian at such amount as the court may determine. The court shall also fix the amount of bond to be given by said alien guardian. The court shall also fix and determine the amount of attorney’s fees in all such guardianship matters.

“Whenever any alien guardian shall fail, neglect or refuse to comply with the terms and provisions hereof, he may be removed as guardian of said estate by the court, when deemed to be for the best interests of said estate.

“The court shall require a final account to be filed on behalf of any such guardianship estate at the time the ward or wards shall become 21 years of age. The court may also require such matters to be included in said report as said court may deem to be necessary and proper. No such guardianship estate shall be finally closed until the final report shall have been filed and approved by the court. (As amended by Stats. 1943, Ch. 1059, Secs. 1, 2.)

“Sec. 5. (a) The term ‘trustee’ as used in this section means any person, company, association or corporation that as guardian, trustee, attorney in fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien men-

tioned in section two hereof, or to the minor child of such alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

"Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California. (As amended by Stats. 1945, Ch. 1129.)

* * * * *

"Sec. 8.5. No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act. (Added by Stats. 1945, Ch. 1136, Sec. 1.)

(The statute adding this section provides further: "Sec. 2. The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.")

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

“(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

“(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

“(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

“In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

* * * * *

“The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein. (Amended by Stats. 1945, Ch. 1129, Sec. 4.)”

* * * * *

APPENDIX "B."

"California and the Oriental," Report of State Board of Control, 1920. California State Printing Office, 1922, pp. 53, 54, 55, 57, 59, 61, 67.

LAND MAPS

Showing

ORIENTAL OCCUPANCY

On the following page is given a relief map of California, showing mountain ranges and the valley lands capable of intense cultivation. On this map has been drawn five squares, outlining five of the richest agricultural districts in California occupied by Orientals.

The map shows considerable mountain areas, and of the valley lands there are but 3,893,500 acres now under irrigation. It is on these lands, the best in the State, that the Oriental has colonized and now occupies 623,752 acres, of which 458,056 acres are occupied by Japanese.

On pages following this relief map are five different maps corresponding to the five districts outlined in the relief map, and which show extent of Oriental occupancy in each district, as follows:

Map No. 1—Rice district of Glenn, Colusa and Butte counties.

Map No. 2—Asparagus, Berry, Vegetable, Fruit and Vineyard sections of San Joaquin, Sacramento, Solano, Yolo, Sutter and Placer counties.

Map No. 3—Vineyard and Fruit districts of Fresno, Kings and Tulare counties.

Map No. 4—Vegetable and Fruit districts of Los Angeles and Orange counties.

Map No. 5—Cantaloupe and Vegetable districts of Imperial county.

Black spots indicate Oriental areas.






CALIFORNIA AND THE ORIENTAL 1920

RELIEF MAP OF STATE SHOWING
PRINCIPAL DISTRICTS OCCUPIED BY

**JAPANESE
CHINESE
HINDUS**

LEGEND

-  Dark Sections
Occupied by Orientals
-  Principal State Highways
-  Approximate limits of
Sacramento and San
Joaquin Valleys



RELIEF MAP OF
CALIFORNIA
BY H. F. WARE
GEOLOGICAL DEPARTMENT
OXFORD UNIVERSITY CALIF.

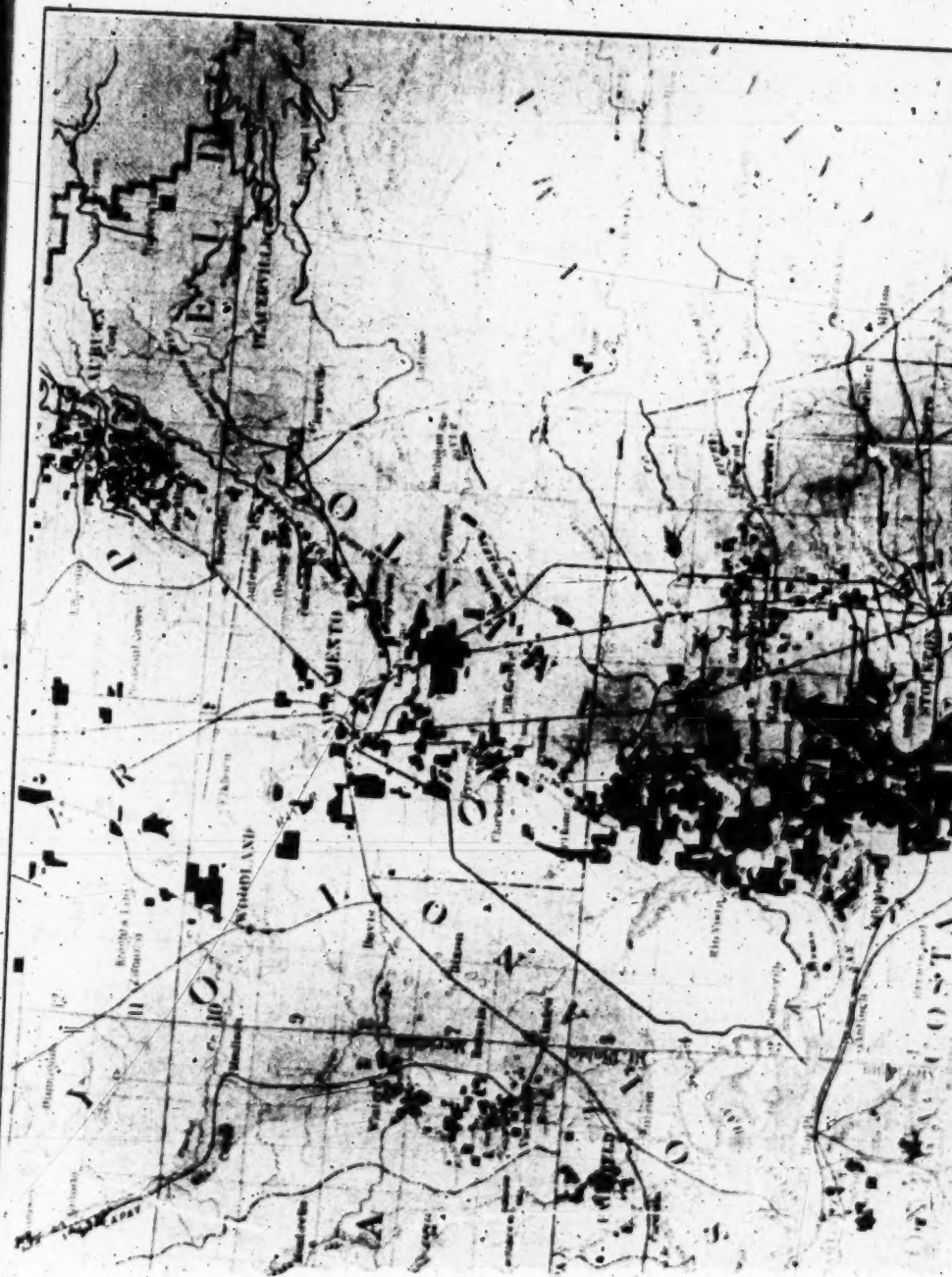
LAND.

MAP NO. 1.



LAND.

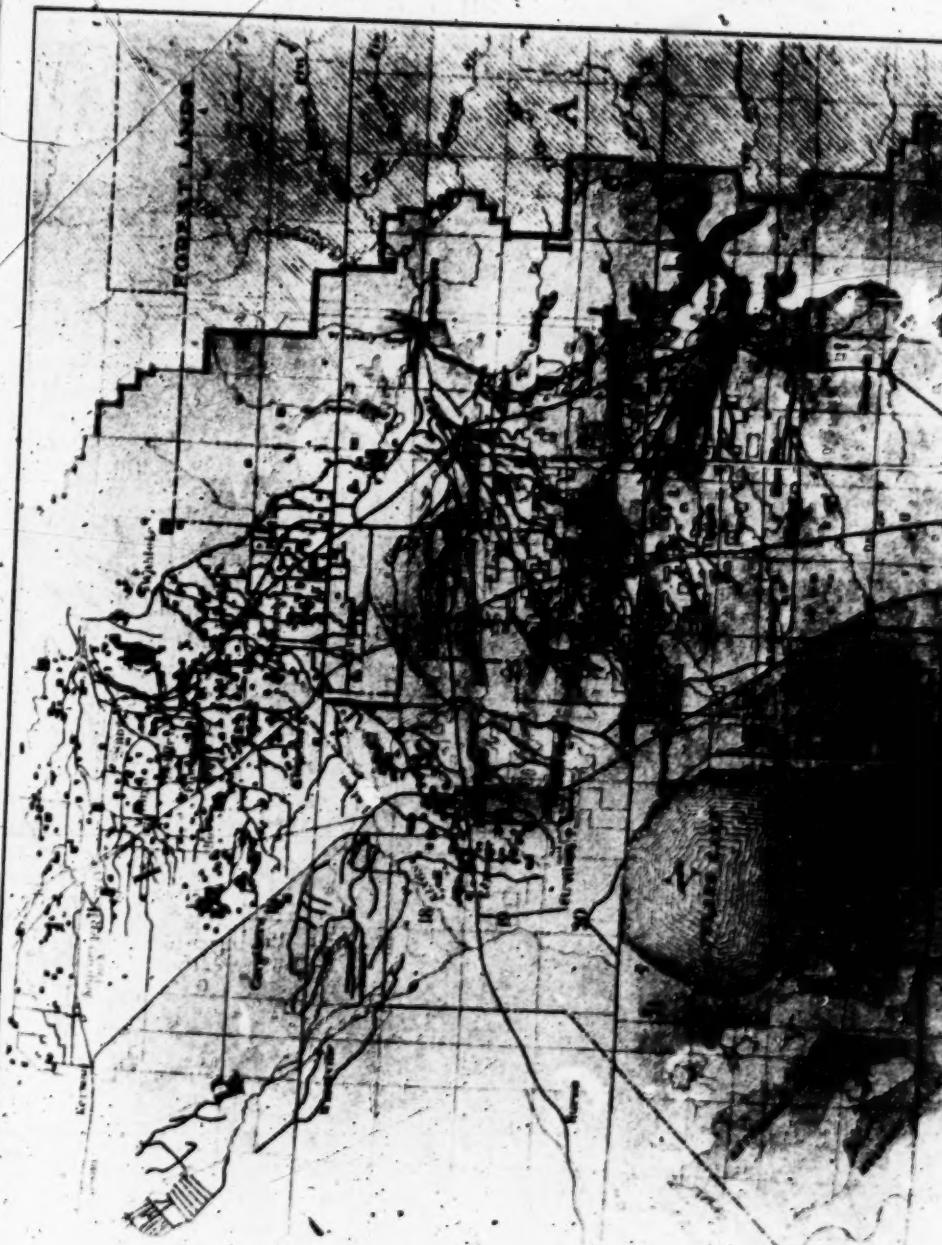
MAP NO. 2.





LAND.

MAP NO. 3.

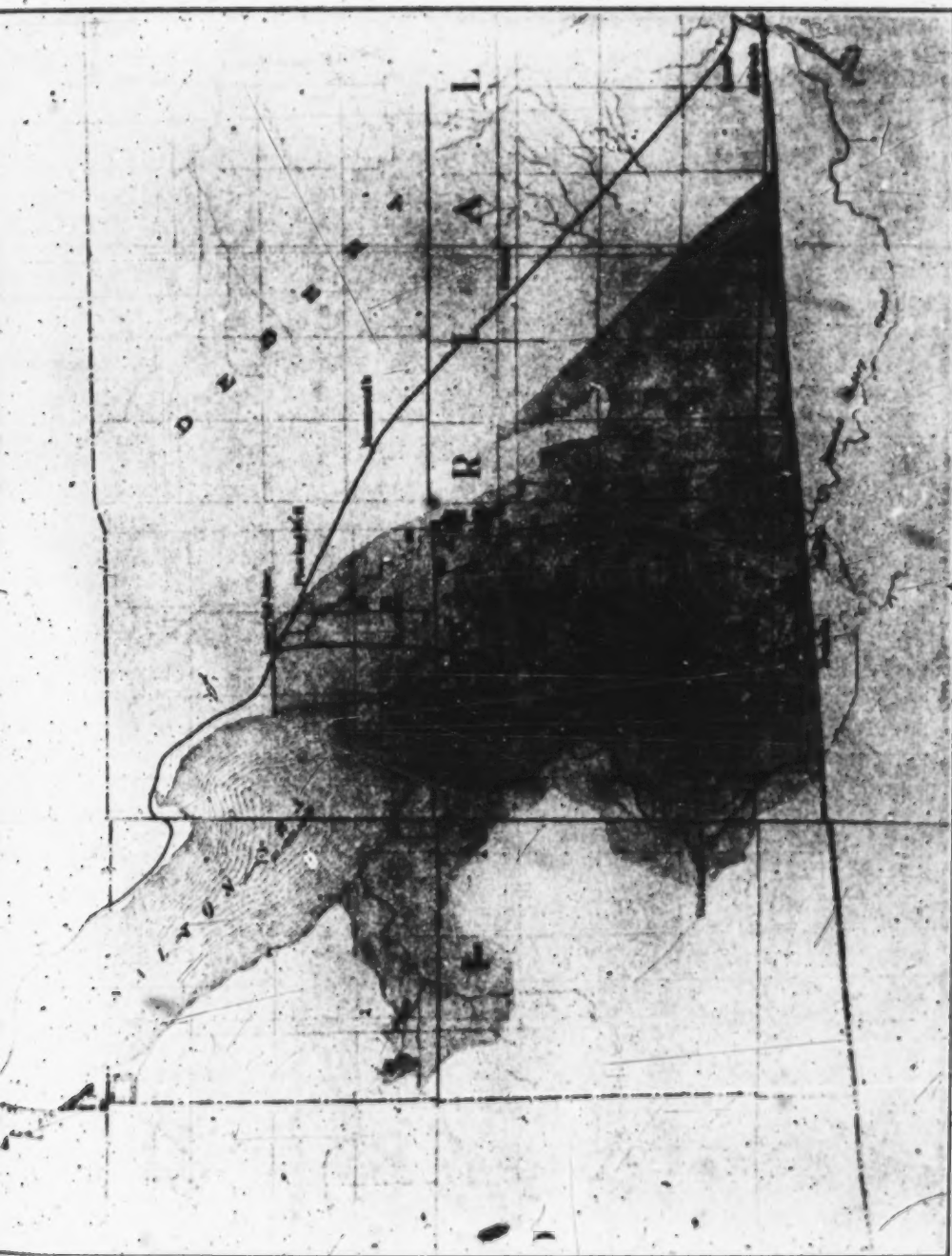


LAND.

MAP NO 4.



MAP NO. 5.



APPENDIX "C."

Excerpt from "Brief for the United States" in *Hirabayashi v. United States*, 320 U. S. 81, pages 19 to 31, inclusive:

Japanese Problem on the West Coast.—Japanese immigration to this country had created special problems at least since the close of the nineteenth century when the Japanese began to come to this country in substantial numbers.¹⁶ The intensity of the situation, involving their relationship to the rest of the community, has fluctuated under the stimulus of politics and some parts of the press.¹⁷ The prevailing viewpoint towards them was expressed in state legislation prohibiting alien Japanese from owning land¹⁸ and prohibiting inter-marriage with Caucasians,¹⁹ and by Section 13c of the Federal Immigration Law of 1924 (c. 190, 43 Stat. 161, U. S. C.,

¹⁶See Mears, *Resident Orientals on the American Pacific Coast* (1927), pp. 19-22, 39-43, 146-147, 156, 193; P. J. Treat, *Japan and the United States* (1928), p. 275; E. K. Strong, *The Second-Generation Japanese Problem* (1934), p. 1, ch. 4, p. 149; R. D. McKenzie, *Oriental Immigration*, 11 *Encyclopedia of Social Sciences* (1935), 490, 492-493; Hans Kohn, *Race Conflict*, 13 *Encyclopedia of Social Sciences* (1935), 36, 38; R. L. Buell, *Anti-Japanese Agitation in the United States*, 37 *Political Science Quarterly* (1922), 605, 608, *et seq.*, 38 *Pol. Science Quarterly* (1923), 57, *passim*; B. Schrieke, *Alien Americans, A Study of Race Relations* (1936), pp. 24-36, 43.

¹⁷Mears, *op. cit. supra*, at p. 398; P. J. Treat, *op. cit. supra*, p. 281; S. L. Gulick, *The American Japanese Problem* (1914), p. 169; H. A. Millis, *The Japanese Problem in the United States* (1915), pp. 249-250; J. Pajus, *The Real Japanese California* (1937), p. 167.

¹⁸1913 Cal. Stat. 206, 1 Deering Gen. Laws, Act 261; 5 Oregon Comp. Laws Ann. Sec. 61-102; Washington, Rem. Rev. Stat. Sec. 10581-10582.

¹⁹California Civil Code Sec. 60; 2 Idaho Code Ann. Sec. 31-206; Revised Code of Montana, Sec. 5702; Arizona Code Ann. (1939), Sec. 63-107.

Tit. 8, Sec. 213) which, rather than allowing a quota to enter as in the case of non-Asiatics, excluded persons of the Mongolian race with limited exceptions. On the economic level, the Japanese could secure professional or skilled employment, with rare exceptions, only among others of the Japanese race and such employment opportunities were not sufficient to satisfy the number of Japanese who desired to engage in such work.²⁰ There was relatively little social intercourse between the Japanese and the white population,²¹ and the Japanese were, in general, physically isolated with respect to their places of residence.²²

The reaction of the Japanese to their lack of assimilation and to their treatment is a question which of course does not admit of any precise answer. It is entirely possible that an unknown number of the Japanese may lack to some extent a feeling of loyalty toward the United States as a result of their treatment,²³ and may

²⁰Mears, *op. cit. supra*, p. 188 *et seq.*, particularly pp. 198-209, 402-403; Strong, *op. cit. supra*, pp. 1-11, c. 10; *Hearings Before the House Committee Investigating National Defense Migration*, 77th Cong. 2d Sess., hereinafter called Tolan Committee Hearings, pp. 1558, 11560.

²¹Millis, *op. cit. supra*, pp. 288-289; Gulick, *op. cit. supra*, pp. 169-171; Schrieke, *op. cit. supra*, pp. 39-40.

²²Mears, *op. cit. supra*, at pp. 341-342, 348-349; Steiner, *The Japanese Invasion* (1917), pp. 104-107, c. 8.

²³Iyenago and Sato, *Japan and the California Problem*, pp. 167-168, 172-177; Mears, *op. cit. supra*, pp. 106, 109-110, 153-154, 342; H. B. Johnson, *Discrimination Against the Japanese in California* (1907), *passim*; Ichihashi, *Japanese in the United States*, at p. 347. Cf. Strong, *op. cit. supra*, pp. 30-31.

On the other hand, an officer of the Japanese-American Citizens League expressed the view that he had not "become bitter" or lost faith as the result of discrimination and wished to combat it exclusively by democratic methods. Tolan Committee Hearings, pp. 11138, 11196-11197. And it stated in H. Rep. No. 1911, 77th Cong., 2d Sess., p. 20, that "most of the evacuees are loyal to this country."

feel a consequent tie to Japan, a heightened sense of racial solidarity, and a compensatory feeling of racial pride or pride in Japan's achievements.

Alienage—An additional factor to be considered is the alienage of a substantial portion of the Japanese who were born abroad and are therefore ineligible for citizenship. *Ozawa v. United States*, 260 U. S. 178. Although the alien Japanese comprised only about one-third of the Japanese on the West Coast,²⁴ they represented a much greater proportion of those who were likely to be an active force in the community. While over 60% of the native-born population was under the age of 20, over 95% of the foreign-born population was between the ages of 19 and 70.²⁵ Furthermore, approximately 24% of the alien Japanese population on the West Coast had last arrived in the United States since 1929,²⁶ and thus have been in Japan during the period of its emphasis on nationalism and expansion. The influence of the first, or alien, generation on the second generation must be considered in the light of the preponderance of persons of mature years among the former as compared with the latter, and also in the light of the family relationships between persons of the two generations, for filial obligation and emphasis on the family unit constitute a conspicuous phase of Japanese culture. It may be noted, however, that because of the stress of the attempt by second-generation Japanese to become assimilated and

²⁴See 16th Census of the United States, *loc. cit. supra*, note 14.

²⁵Source of computation: Bureau of Census Figures contained in Hearings before the Subcommittee of the Committee on Military Affairs of the United States Senate on S. 444, Part I, 1943, p. 65.

²⁶Tolan Committee Report, p. 96.

because of language difficulties between children and parents who have not learned to speak English fluently, parents have in many cases been unsuccessful in attempting to perpetuate the view that their children should follow their guidance, and a marked cleavage between the viewpoints and associations of the first and second generations has been observed.²⁷

As to those of the first generation, the fact of their alienage would tend to cause them to have some association with the Japanese Consulate.²⁸ And in general, the Japanese consuls were viewed as persons of considerable prestige by the alien population, and even some of the second generation seem to have regarded them as personages of some importance.²⁹ The possibility of Japanese propaganda through this means, as part of its preparations for any war against this country, is obvious.

Dual Nationality.—The possibility of a continuing loyalty to Japan, even on the part of the second generation is a significant consideration when viewed in the light of the provisions for dual nationality.³⁰ A child

²⁷See Ichihashi, *op. cit. supra*, at p. 348; Tolan Committee Hearings, pp. 11148, 11223; Second Quarterly Report (June 1 to September 30, 1942) of the War Relocation Authority, pp. 55-58; Schrieke, *op. cit. supra*, pp. 36-39.

²⁸See H. Rep. No. 1911, Preliminary Report of Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2d Sess., p. 17.

²⁹See Miyamoto, *Social Solidarity Among the Japanese in Seattle*, 11 University of Washington Publications in the Social Sciences (December 1939), pp. 112-113; Tolan Committee Hearings, p. 11637.

³⁰Cf. Nationality Law of Japan, Article 1, Flournoy and Hudson, *Nationality Laws*, p. 382.

born in the United States of Japanese alien parents prior to December 1, 1924, automatically became entitled to and retained Japanese citizenship unless a petition of renunciation was filed on his behalf, by a legal representation before his 15th birthday, or by him at any time between his 15th and 17th birthdays. Such petitions would not become effective as renunciation of Japanese citizenship, however, unless personally approved by the Japanese Minister of the Interior.³¹

On the other hand, a child of Japanese alien parentage born in the United States after December 1, 1924, could claim or qualify for Japanese citizenship only if within 14 days of birth there had been filed on his behalf with the Japanese Consulate a written statement of intention to retain Japanese nationality.³²

No official census of the number who did so is available. The Japanese consulates in the United States, however, have issued from time to time reports of the number of American-born children of Japanese parentage who still retain their Japanese citizenship, and the number

³¹Nationality Law of Japan, Article 20, Section 3, Regulations (Ordinance No. 26) of November 17, 1924, Flournoy and Hudson, *Nationality Laws*, pp. 385-387. See also *Foreign Relations of the United States*, 1924, Vol. 2, p. 412 (Note of Honorable Jefferson Caffrey, The Chargé in Japan to the Secretary of State); Mears, *Resident Orientals on the American Pacific Coast*, pp. 107-108.

³²See Mears, *Resident Orientals on the American Pacific Coast*, p. 108.

of such children who have renounced, or otherwise lost their Japanese nationality. On the basis of statistics released in 1927 by the Consul General of Japan at San Francisco, it appears that over 51,000 of the approximately 63,700 American-born persons of Japanese parentage in the United States held Japanese citizenship.³³ A census of the Japanese in the United States conducted in 1930 under the auspices of the Japanese Government purported to disclose that approximately 47% of the American-born persons of Japanese parentage in California held Japanese citizenship.³⁴

An important aspect of dual citizenship was that the Japanese Government regarded all Japanese citizens as liable to military conscription and required them to apply for out-of-Empire deferment in order to avoid it.³⁵

Shintoism.—Another factor to be taken into account in considering the viewpoints and loyalties of the West Coast Japanese is the existence and nature of Shintoism. It seems to be accepted that the basic doctrine of Shinto is the apotheosis of, and reverence for, the Japanese Imperial Family, and that the Japanese Government has, since at least the middle of the 19th century, made it a primary function of government to spread belief in Shin-

³³See Mears, *op. cit. supra*, p. 429.

³⁴See Strong, *op. cit. supra*, p. 142.

³⁵See, e. g., military conscription notice appearing in *Rafu Shimpō* (Los Angeles Japanese language daily newspaper), October 11, 1941.

to throughout Japan.³⁶ As an amplification of the doctrine of the divinity of the Emperor, an attempt has been made in Japan to identify the extension of Japanese rule or influence as a sacred purpose.³⁷

While the force of Shinto in Japan as a source of stimulation for patriotism and loyalty to the Japanese Emperor cannot be doubted, the prevalence of Shintoism among the West Coast Japanese is a difficult factor to evaluate. For one thing, religious surveys do not show the number of its adherents since belief in Shintoism together with simultaneous belief in another religion is possible and common, and also because the Japanese Government has frequently maintained that Shintoism could not properly be classed as a religion.³⁸ However, there

³⁶See Yamashita, Yoshitaro (formerly chancellor, Imperial Japanese Consulate, London), *The Influence of Shinto and Buddhism in Japan*, Transactions and Proceedings of the Japan Society of London, Vol. 14, p. 257, quoted in D. C. Holtom, *The National Faith of Japan* (1938); pp. 4-5; *Japan, Religion*, 15 *Encyclopedia Britannica* (11th Ed., 1911), p. 222; *Japan, Religion*, 12 *Encyclopedia Britannica* (14th Ed., 1936); pp. 926-927; *Shintoism*, 20 *Encyclopedia Britannica* (14th Ed., 1936), p. 504; M. Anesaki, *Shinto*, 14 *Encyclopedia of Social Sciences* (1935), p. 24; A. M. Young, *Rise of a Pagan State* (1939), ch. 6; A. M. Underwood, *Shintoism* (1934), ch. 9; D. C. Holtom, *The Political Philosophy of Modern Shinto; A Study of the State Religion of Japan*, 49 Transactions of the Asiatic Society of Japan, Part II (1922), pp. 299-301; D. C. Holtom, *Modern Japan and Shinto Nationalism* (1943), ch. 1, 2, and 3. For complete accuracy this form of Shinto is frequently termed State Shinto, since sects exist which emphasize reverence of others than the Emperor.

³⁷See D. C. Holtom, *The National Faith of Japan* (1938), p. 289; Otto D. Tolischus, *Tokyo Record* (1934), pp. 13-16.

³⁸See Holtom, *The National Faith of Japan* (1938), p. 290, *et seq.*

can be no doubt that at least those Japanese who were at any time in Japan were exposed to Shinto indoctrination. And it has been stated that there was an increase in Shintoism on the West Coast in recent years.³⁹

While Shinto doctrine was not originally a part of the Buddhist religion, Buddhism in Japan has accommodated itself to, and has aided in the indoctrination of State Shinto.⁴⁰ On the West Coast a substantial number of Japanese were Buddhists,⁴¹ and it has been stated that some of the Buddhist priests in the West Coast

³⁹See Schrieke, *op. cit. supra*, p. 41.

While it is true that a 1936 census listed only one Shintoist Temple in Los Angeles (see, 1 *Religious Bodies*, 1936, Department of Commerce, Bureau of Census, 1941, p. 7), there were in 1941, according to directories published by the West Coast Japanese language papers, 28 Shinto shrines in California, 2 in Washington, and 2 in Oregon. (The New World Sun Year-Book for 1941, pp. 122, 112, 517, 319, 371, 279, 393, 190, 90, 497, 209, 612, 17, 492, 282, 629, 591; Japanese-American Directory (Nichibei Jusho Roku) for 1941, pp. 77, 82, 530, 268, 503, 232, 307, 156, 56, 177, 2, 429, 236, 549, 579). Some of these shrines, however may have been devoted to the practice of sects of Shinto other than State Shinto. As to the number of shrines in Los Angeles see also Japanese Telephone & Business Directory of Southern California, No. 29.

⁴⁰D. C. Holtom, *Modern Japan and Shinto Nationalism* (1943), pp. 124, 148-151. Compare Sir Charles Eliot, *Japanese Buddhism* (1935), pp. 179-196.

⁴¹According to the 1936 survey, there were 65 Japanese clergymen, together with two deans and one bishop, connected with the Buddhist Mission of North America on the West Coast. The Mission had 31 churches in the three West Coast states, with 12,718 members, out of a total of 35 churches with 14,388 members in the United States as a whole. In connection with the Buddhist churches, some Japanese Language Schools of a religious nature were maintained (2 *Religious Bodies*, 1936, Department of Commerce, Bureau of Census, 1941, pp. 341-346).

communities also attempted to indoctrinate their congregations with Japanese nationalism.⁴²

Education of American-born children in Japan.—It has been estimated by the Tolan Committee that approximately 10,000 American-born children of Japanese parents had been sent to Japan for part or all of their education. See H. Rep. No. 1911, 77th Cong., 2d Sess., p. 16⁴³ Although some of them have doubtless become antagonistic towards the Japanese Government as a result of their visits,⁴⁴ this group of 10,000 is nevertheless regarded as containing some of the most dangerous elements in the Japanese community. H. Rep. No. 11, *supra*. Youths thus educated in Japan are essentially and culturally⁴⁵ Japanese, and it is probable that many of them are intensely loyal to Japan.⁴⁶ It is reasonable to assume that such students were inculcated with Japa-

⁴²See Millis, *op. cit. supra*, pp. 267-268. Thus, a Buddhist priest at a dedication ceremony of a new Temple, was reported in the Los Angeles Japanese language daily, *Rafu Shimpō*, for November 22, 1940, as suggesting to his audience that "We are the race of Yamato which has received and carried on the flesh and blood of our ancestors over a period of 2,600 years. Therefore, there is no necessity for us to give up our spirit to the United States merely because we have received a little education."

⁴³The foregoing report estimates that there are about 60,000 American-born Japanese who had not been sent to Japan. These estimates should be compared with a survey conducted by the San Francisco Chapter of The Japanese American Citizens League in October 1940 which disclosed that 22.8% of the second generation were American-born and had been to Japan. See Tolan Committee Hearings, p. 11151. See also *id.*, pp. 11199-11200.

⁴⁴See Tolan Committee Hearings, pp. 11220-11229.

⁴⁵Ichihashi, *op. cit. supra*, pp. 319-320.

⁴⁶*The Japanese in America, Harpers Magazine* (October 1942), pp. 489, 491, 492.

nese nationalistic philosophy and were exposed to the religious training which identifies the Emperor as a deity.⁴⁷

Japanese Language Schools on the West Coast.—A further potential influence on the Japanese on the West Coast were the Japanese language schools. It has been stated that there were 248 such schools with 19,000 pupils in Southern California at the outbreak of the war,⁴⁸ that there were 14 schools in Oregon and 9 in Seattle, Washington.⁴⁹ The sessions at these schools were held outside the regular hours of the public schools.⁵⁰

Although it has been suggested that the children were sent to these schools so that they might more easily converse with their parents⁵¹ and because of increased employment opportunities in Japanese firms,⁵² it nevertheless appears likely that the schools may have afforded a convenient medium for indoctrinating the pupils with Japanese nationalistic philosophy. There is evidence that

⁴⁷See Holtom, *Modern Japan and Shinto Nationalism* (1942), pp. 6-7, 26, which indicates that religious training is an integral part of the Japanese educational program. Not only does such education stress the national character of Japan, but it focuses upon the divinity of the Imperial Family. See Holtom, *The National Faith of Japan* (1938), pp. 79-85, 125, 131-138.

⁴⁸Statement in the *Los Angeles Times* of January 23, 1942, quoted in Report on Japanese Activities, Appendix 6 to Hearings before a Committee on Un-American Activities, House of Representatives, 77th Cong., 1st Sess., p. 1894.

⁴⁹Tolan Committee Hearings, pp. 11393, 11394; see also pp. 11348, 11338, 11702.

⁵⁰See Mears, *op. cit. supra*, p. 358; Tolan Committee Hearings, pp. 11145, 11223.

⁵¹See Tolan Committee Hearings, p. 11,145.

⁵²See Mears, *op. cit. supra*, p. 358; Strong, *op. cit. supra*, p. 203; Tolan Committee Hearings, pp. 11144-11145, 11222-11223.

the textbooks used at these schools were printed in Japan,⁵³ and that the Japanese Government assisted the schools both financially and by sending teachers from Japan.⁵⁴

Japanese Organizations.—There is evidence that the Japanese in this country were highly organized, and that many of the local associations were part of an integrated structure dominated by The Japanese Association of America which had been organized under the guidance of the Japanese Consulate.⁵⁵ Moreover, there were numerous other Japanese organizations which maintained close ties with Japan.⁵⁶ Whatever may be the full significance of these organizations, it is apparent that they probably tended to stimulate cohesiveness and social solidarity of the Japanese community and that they offered the Japanese Consulate a means at least for the dissemination of propaganda.

⁵³See *Los Angeles Times*, cited in footnote 48 *supra*.

⁵⁴See *Un-American Activities in California* (Report to California legislature 1943), pp. 327-328. Cf. Tolan Committee Hearings, p. 11637.

⁵⁵See Tolan Committee Hearings, p. 10975, *et seq.*; *Beikoku Chuo Nihonjin Shi* (History of the Central Japanese Association of America) edited by Shiro Fujioka (published in Tokyo in 1940), pp. 15, 170, 171, 175, 191, 303-304; cf. Mears, *op. cit. supra*, p. 342.

⁵⁶For example, *Heimusha Kai*, The Society of Men Eligible For Military Duty, was listed as having 15 branches in California by The New World Sun Year-Book for 1941. As to its activities and relationship to Japan, see *Zaibei Nihonjin Shi* (History of Japanese Residents in the United States) published by Zaibei Nihonjin Kai (Japanese Association of America) in Tokyo, 1940, p. 672.

APPENDIX "B."

Act Permitting Quiet Title Actions Against the State in Cases of Possible Escheat. Statutes of 1945, Chapter 1363 (Effective Sept. 15, 1945).

An act to add Section 738.5 to and amend Section 407 of the Code of Civil Procedure, relating to actions to determine conflicting claims to property.

The people of the State of California do enact as follows:

Section 1. Section 738.5 is added to the Code of Civil Procedure, to read:

738.5. An action may be brought against the State of California to determine whether or not an escheat has occurred as to any real property or interest therein under the provisions of "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," approved by the electorate November 2, 1920, and as amended. Such an action may be commenced by any person claiming an interest in the property. The complaint shall describe the property and shall specify the instrument or instruments in the chain of title to the property which gave rise to the possibility of

such escheat. The State of California shall be the sole defendant in such action and no other matter may be adjudicated except the issue of the occurrence of an escheat. No issue shall be raised or claim made by the plaintiff in such action based upon estoppel, or failure of the State to have commenced an escheat proceeding, nor shall any statute of limitation operate to bar an adjudication in such action that the property or any interest therein has escheated to the State. A copy of the complaint and summons shall be served upon the Attorney General or his assistant, or any of his deputies, and upon the district attorney or county counsel of the county in which the property is situated, or upon their respective assistants or deputies. Such district attorney or county counsel shall perform duties similar to those required to be performed in escheat proceedings commenced by the State under the provisions of the act mentioned in this section. The Attorney General or district attorney or county counsel shall have 180 days, as a matter of right, in which to answer or otherwise plead. If at any time during the pendency of the action the Attorney General determines that under the law or the facts or both no such escheat has occurred, he may, with the consent of the State Controller, file a disclaimer in such action and thereupon judgment shall be entered against the State.

Sec. 2. Section 407 of the Code of Civil Procedure is amended to read:

407. The summons must be directed to the defendant, signed by the clerk or justice, and issued under the seal of the court. It must contain:

1. The title of the court in which the action is brought, the name of the county in which the complaint is filed and, in municipal and justices' courts, the name of the city, town, or judicial township in which such court is established;

2. The names of the parties to the action;

3. A direction that the defendant appear and answer the complaint within 10 days, if the summons is served within the county in which the action is brought, or within 30 days, if served elsewhere, except that if the action is against the State pursuant to Section 738.5 of this code, within 180 days;

4. A notice, that unless the defendant so appears and answers, the plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract, or will apply to the court for any other relief demanded in the complaint.